

**MAY 3 HEARING  
TRANSCRIPT RE  
SPECIAL MASTER  
OBJECTIONS**

**Redacted Version  
of Document Sought  
to be Sealed**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHASOM BROWN, MARIA NGUYEN, AND ) C-20-03664 YGR  
WILLIAM BYATT, INDIVIDUALLY AND )  
ON BEHALF OF ALL SIMILARLY ) SAN JOSE, CALIFORNIA  
SITUATED, )  
 ) MAY 3, 2022  
PLAINTIFF, )  
 ) PAGES 1-65  
VS. )  
 ) **SEALED PROCEEDINGS**  
GOOGLE LLC AND ALPHABET INC., )  
 )  
DEFENDANTS. )  
\_\_\_\_\_ )

SEALED TRANSCRIPT OF ZOOM PROCEEDINGS  
BEFORE THE HONORABLE SUSAN VAN KEULEN  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: SUSMAN GODFREY LLP  
BY: AMANDA K. BONN  
1900 AVENUE OF THE STARS, SUITE 1400  
LOS ANGELES, CALIFORNIA 90067  
  
BY: ALEXANDER P. FRAWLEY  
RYAN SILA  
1301 AVENUE OF THE AMERICAS, 32ND FLOOR  
NEW YORK, NEW YORK 10019

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 APPEARANCES (CONTINUED)

2 FOR THE PLAINTIFFS: BOIES SCHILLER FLEXNER LLP

3 BY: MARK C. MAO  
BEKO REBLITZ-RICHARDSON  
ERIKA B. NYBORG-BURCH

4 44 MONTGOMERY STREET, 41ST FLOOR  
SAN FRANCISCO, CALIFORNIA 94104

5 BY: ALISON L. ANDERSON  
725 S. FIGUEROA STREET, 31ST FLOOR  
6 LOS ANGELES, CALIFORNIA 90017

7 MORGAN & MORGAN  
8 COMPLEX LITIGATION GROUP  
9 BY: JOHN A. YANCHUNIS  
RYAN J. MCGEE  
201 N. FRANKLIN STREET, 7TH FLOOR  
10 TAMPA, FLORIDA 33602

11 BY: MICHAEL F. RAM  
12 711 VAN NESS AVENUE, SUITE 500  
13 SAN FRANCISCO, CA 94102

14 FOR THE DEFENDANT: QUINN EMANUEL URQUHART & SULLIVAN  
15 BY: ANDREW H. SCHAPIRO  
191 N. WACKER DRIVE, SUITE 2700  
16 CHICAGO, ILLINOIS 60606

17 BY: STEPHEN A. BROOME  
VIOLA TREBICKA  
18 865 S. FIGUEROA STREET, 10TH FLOOR  
19 LOS ANGELES, CALIFORNIA 90017

20 BY: JOSEF ANSORGE  
51 MADISON AVENUE  
21 NEW YORK, NEW YORK 10010

22 BY: XI GAO  
1300 I STREET NW, SUITE 900  
23 WASHINGTON, DC 20005

24 ALSO PRESENT: DOUGLAS BRUSH  
25 TIMOTHY SCHMIDT  
CHRISTOPHER THOMPSON  
LILLIAN DAI

1 SAN JOSE, CALIFORNIA

MAY 3, 2022

2 P R O C E E D I N G S

3 (SEALED ZOOM PROCEEDINGS CONVENED AT 1:05 P.M.)

4 THE CLERK: PLEASE COME TO ORDER, THE HONORABLE  
5 SUSAN VAN KEULEN PRESIDING.

6 THE COURT: GOOD AFTERNOON, EVERYONE. WELCOME TO THE  
7 1:00 O'CLOCK CALENDAR.

8 WE'RE ON TODAY IN THE BROWN VERSUS GOOGLE AND CALHOUN  
9 VERSUS GOOGLE MATTERS FOR A HEARING WITH REGARDS TO REPORT AND  
10 RECOMMENDATION FROM THE SPECIAL MASTER ON THE PRESERVATION  
11 PLAN.

12 WE WILL TAKE THE MATTERS ONE AT A TIME, STARTING WITH  
13 BROWN. I HAVE APPRISED THE PARTIES OF MY TIME LIMITS AND  
14 TOPICS TO HELP GUIDE THE DISCUSSION TODAY.

15 SO LET'S START WITH APPEARANCES, AND THEN WE'LL TURN OUR  
16 ATTENTION TO CLOSING THE HEARING.

17 MS. FANTHORPE, CALL THE MATTER, PLEASE.

18 THE CLERK: CALLING CASE 20-CV-3664, BROWN, ET AL,  
19 VERSUS GOOGLE LLC, ET AL.

20 COUNSEL, PLEASE IDENTIFY YOURSELVES FOR THE RECORD,  
21 BEGINNING WITH PLAINTIFF.

22 MS. BONN: GOOD MORNING, YOUR HONOR.

23 AMANDA BONN WITH SUSMAN GODFREY FOR PLAINTIFFS.

24 AND ALSO ON THE LINE WITH ME ARE MY COLLEAGUE ALEX FRAWLEY  
25 FROM SUSMAN GODFREY; MARK MAO, BEKO REBLITZ-RICHARDSON, AND

1 ALISON ANDERSON FROM THE BOIES, SCHILLER & FLEXNER LAW FIRM;  
2 JOHN YANCHUNIS AND RYAN MCGEE FROM THE MORGAN & MORGAN LAW  
3 FIRM.

4 THE COURT: ALL RIGHT. THANK YOU, MS. BONN.

5 IS THAT EVERYONE FOR PLAINTIFFS IN BROWN?

6 MS. BONN: YES, YOUR HONOR.

7 THE COURT: THANK YOU.

8 AND APPEARANCES FOR DEFENDANT, PLEASE.

9 MR. SCHAPIRO: HELLO, YOUR HONOR.

10 I'M ANDREW SCHAPIRO FROM QUINN, EMANUEL FOR GOOGLE, AND I  
11 AM JOINED BY MY COLLEAGUES VIOLA TREBICKA, JOSEPH ANSORGE, ONE  
12 OF OUR STAR ASSOCIATES, TRACY GAO, AND OUR COLLEAGUE  
13 STEVE BROOME.

14 MS. TREBICKA, MR. ANSORGE, DR. ANSORGE, AND MS. GAO WILL  
15 BE DOING THE LION'S SHARE, OR MAYBE THE ENTIRETY OF THE  
16 SPEAKING TODAY.

17 THE COURT: THANK YOU, MR. SCHAPIRO.

18 ALL RIGHT. I DID RECEIVE THE PARTIES' REQUEST THAT THIS  
19 PROCEEDING BE SEALED, AND I HAVE GRANTED THAT REQUEST.

20 I UNDERSTAND THERE WAS A REQUEST FOR SOME ADDITIONAL  
21 ATTENDEES TO BE ALLOWED TO BE PRESENT IN THE HEARING, AND I  
22 ALLOW THAT IF THE PARTIES AGREE. I HAVEN'T HEARD BACK.

23 SO WHERE ARE WE ON THAT? MS. BONN?

24 MS. BONN: WE HAVE TWO FOLKS THAT ARE IN THE WAITING  
25 ROOM, CHRIS THOMPSON, OUR DECLARANT, AND ONE OF OUR CONSULTING

1 EXPERTS, LILLIAN DAI, BOTH OF WHOM ARE APPROVED UNDER THE  
2 PROTECTIVE ORDER TO VIEW AEO MATERIALS, SO WE REQUEST THAT THEY  
3 BE PROMOTED, PLEASE.

4 THE COURT: ALL RIGHT. ANY OBJECTION?

5 MR. SCHAPIRO: YES, YOUR HONOR, WE DO OBJECT. WE  
6 DIDN'T BRING ANY -- OUR EXPERTS WOULD BE GOOGLE ENGINEERS.

7 WE SAW THIS ABOUT TWO HOURS AGO. WE DIDN'T BRING ANYONE  
8 LIKE THAT.

9 WE CERTAINLY WOULD OBJECT TO THEM HAVING ANY SPEAKING ROLE  
10 IN SOME SORT JUST IN FAIRNESS.

11 THE COURT: THEY WON'T HAVE A SPEAKING ROLE. I CAN  
12 ASSURE YOU OF THAT.

13 BUT I DON'T SEE ANY REASON, IF THEY ARE CLEARED FOR AEO,  
14 WHY THEY CAN'T ATTEND.

15 MR. SCHAPIRO: THAT'S ALL RIGHT, SURE. THEY'LL BE  
16 ALLOWED TO SEE THE TRANSCRIPT. SURE, THAT'S FINE.

17 THE COURT: ALL RIGHT.

18 MS. FANTHORPE, THOSE INDIVIDUALS CAN BE MOVED FROM THE  
19 WAITING ROOM TO ATTENDEES.

20 MR. MAO: SORRY, YOUR HONOR. THIS IS MR. MAO.  
21 ONE QUICK HOUSEKEEPING MATTER. THE PLAINTIFF DID NOT  
22 REQUEST THAT THE PROCEEDINGS BE SEALED, THOUGH WE UNDERSTAND  
23 YOUR HONOR HAD ORDERED IT PURSUANT TO GOOGLE'S MOTION.

24 I JUST WANTED TO MAKE THAT CLEAR.

25 THE COURT: GOT IT. I GOT A REQUEST IN EACH CASE.

1           WE'LL SEAL IT. SINCE WE'RE PROCEEDING BY VIDEO, IT IS  
2           EASIER THAN -- I WILL HAVE THE PARTIES REVIEW THE TRANSCRIPT  
3           AND WE WILL UNSEAL ANY PUBLIC PORTIONS.

4           MS. FANTHORPE, LET ME KNOW WHEN YOU'VE BEEN ABLE TO GET  
5           THOSE FOLKS IN. I KNOW WE HAVE TO DEAL WITH ZOOM -- WE'RE ON  
6           ZOOM TIME.

7           (PAUSE IN PROCEEDINGS.)

8           THE CLERK: OH, YOUR HONOR, I BELIEVE THEY'RE BOTH  
9           ADMITTED.

10          I STILL HAVE FOUR ATTENDEES THAT WILL NEED TO LEAVE SO  
11          THAT I CAN LOCK DOWN THIS HEARING. OTHERWISE THEY HEAR  
12          EVERYTHING.

13          MS. BONN: I APOLOGIZE, MS. FANTHORPE.

14          I SEE THAT ONE OF MY COLLEAGUES, RYAN SILA, FROM SUSMAN  
15          GODFREY, AND ERIKA NYBORG-BURCH FROM BOIES SCHILLER ARE ON. I  
16          DON'T THINK THEY WILL HAVE SPEAKING ROLES, BUT IF YOU WOULD  
17          PROMOTE THEM SO THEY COULD OBSERVE, WE WOULD APPRECIATE IT.

18          THE CLERK: THAT'S FOR BROWN, CORRECT?

19          MS. BONN: CORRECT.

20          THE CLERK: FOR RYAN SILA, AND I'M SORRY, WHO ELSE?

21          MS. BONN: ERIKA NYBORG-BURCH.

22          AND I'M SORRY, I SEE MICHAEL RAM FROM MORGAN & MORGAN ALSO  
23          JUST JOINED. IF HE COULD BE PROMOTED AS WELL, WE WOULD  
24          APPRECIATE IT.

25          MR. SCHAPIRO: AND, YOUR HONOR, WHILE THEY'RE PAUSED,

1 JUST SO IT'S NOT DISRUPTIVE, I WANTED TO FLAG THAT ABOUT AN  
2 HOUR AND A HALF IN, A LITTLE AFTER THAT, I'M GOING TO HAVE TO  
3 SIGN OFF. I HAVE A CONFLICT THAT I MENTIONED WHEN I WAS BEFORE  
4 YOU LAST WEEK. BUT NO ONE WILL MISS ME BECAUSE THE PEOPLE WHO  
5 ACTUALLY KNOW WHAT THEY'RE TALKING ABOUT WILL REMAIN. I  
6 BELIEVE MR. BROOME MIGHT HAVE TO DROP OFF, TOO.

7 THE COURT: ALL RIGHT. THANK YOU, MR. SCHAPIRO.

8 ALL RIGHT.

9 THE CLERK: YOUR HONOR, I NEED A MINUTE.

10 THE COURT: OH, SURE.

11 THE CLERK: I HAVE MR. RAM IN BETWEEN WORLDS RIGHT  
12 NOW.

13 AND THERE'S ONE OTHER ATTENDEE, PARRISH, THAT'S NOT  
14 SOMEONE THAT NEEDS TO BE PROMOTED. I EITHER NEED YOU TO LEAVE  
15 THE HEARING, OR I WILL JUST REMOVE YOU FROM THE HEARING.

16 THE COURT: LET'S GO AHEAD AND CLOSE THE PROCEEDINGS,  
17 MS. FANTHORPE. THANK YOU.

18 THE CLERK: THE WEBINAR IS LOCKED, YOUR HONOR.

19 THE COURT: THANK YOU.

20 I ALSO WILL NOTE FOR THE RECORD THAT WE HAVE OUR COURT  
21 APPOINTED SPECIAL MASTER, DOUGLAS BRUSH, AND  
22 MR. TIMOTHY SCHMIDT IN ATTENDANCE AS WELL.

23 OBVIOUSLY ALL COUNSEL ARE VERY FAMILIAR WITH MR. BRUSH AND  
24 MR. SCHMIDT. YOU'VE SPENT A GREAT DEAL OF TIME WITH THEM IN  
25 RECENT MONTHS, AND THEY WORKED TO PUT TOGETHER THE PRESERVATION

1 PLAN THAT IS THE SUBJECT OF OUR HEARING HERE TODAY.

2 ALL RIGHT. IF I CAN -- THE SPECIAL MASTER AND MR. SCHMIDT  
3 SHOULD LEAVE YOUR VIDEOS ON.

4 ANYONE WHO ANTICIPATES THAT THEY'LL BE ADDRESSING THESE  
5 ISSUES IN BROWN V. GOOGLE, PLEASE LEAVE YOUR VIDEO ON.

6 AND IF OTHERS COULD TURN YOUR VIDEO OFF, THAT WOULD BE  
7 HELPFUL. OBVIOUSLY YOU CAN REAPPEAR AT ANY TIME.

8 ALL RIGHT. JUST A COUPLE OF GENERAL COMMENTS, AND THEN  
9 WE'LL GET UNDERWAY WITH THE LINE OF INQUIRY THAT I OUTLINED FOR  
10 THE PARTIES IN MY ORDER OF YESTERDAY.

11 OBVIOUSLY THE PARTIES, WITH THE SPECIAL MASTER, HAVE BEEN  
12 WORKING FOR MANY, MANY MONTHS, THE BETTER PART OF A YEAR I  
13 THINK IT'S FAIR TO SAY, OVER IN AND AROUND DATA SOURCES,  
14 IDENTIFYING CRITICAL SOURCES, EXTRACTING DATA FROM THOSE  
15 SOURCES LEADING TO PRODUCTION. THIS HAS BEEN A MANY, MANY  
16 MONTH PROCESS.

17 AS THAT PROCESS CONTINUED AND AS TIME IN THE CASE MOVED  
18 ALONG, IT BECAME NECESSARY TO ADDRESS A LONG-TERM PRESERVATION  
19 PLAN AND THE PARTIES HAD RAISED THAT, CERTAINLY PLAINTIFFS IN  
20 BOTH CASES HAD RAISED THE NEED FOR A PRESERVATION PLAN, AND THE  
21 SPECIAL MASTER DIRECTED THE PARTIES TO GET TO WORK ON THAT.

22 AND I HAVE BEEN PROVIDED THE ENTIRE RECORD OF THE  
23 PROCEEDINGS ON THIS TOPIC BEFORE THE SPECIAL MASTER, NOT JUST A  
24 LOG OF ALL OF THE INFORMAL CONFERENCES, BUT AS WELL AS LAYING  
25 OUT THE REQUESTS TO THE PARTIES, THE DIRECTIONS, THE

1           INSTRUCTIONS, THE FOLLOW-UP, WHAT WAS, IN FACT, RECEIVED FROM  
2           THE PARTIES, NOTABLY WHAT WAS NOT RECEIVED FROM THE PARTIES,  
3           AND THAT WHOLE PROCESS, AND I HAVE HAD AN OPPORTUNITY TO REVIEW  
4           THAT AND OBVIOUSLY TO DISCUSS IT WITH THE SPECIAL MASTER SO I  
5           COULD APPRECIATE WHAT I WAS, WHAT I WAS SEEING.

6           THE OBJECTIVE OF THAT PROCESS, OF COURSE, WAS FOR THE  
7           PARTIES TO CONSTRUCT, AS NEARLY AS THEY COULD, A PRESERVATION  
8           PLAN, AND OBVIOUSLY I DON'T THINK ANYONE EXPECTED THAT IT WOULD  
9           BE -- THAT IT WOULD COME WHOLESOME AND FULLY APPROVED. THERE  
10          WOULD UNDOUBTEDLY BE ELEMENTS AND COMPONENTS ON WHICH THE  
11          PARTIES DISAGREE, BUT THEN THAT WOULD BE SOMETHING THAT THE  
12          SPECIAL MASTER COULD HELP THE PARTIES WORK OUT THOSE ISSUES.

13          UNFORTUNATELY, TO BE CANDID, THE INPUT FROM THE PARTIES  
14          WAS NOT SUFFICIENT. AND I APPRECIATE THAT THERE'S AN EARLY  
15          DIVERGENCE BETWEEN PRESERVING EVERYTHING AND SAMPLING.

16          BUT, NOTWITHSTANDING THAT, THE PARTIES COULD HAVE AGREED  
17          TO DISAGREE ON THAT APPROACH, BUT STILL HAD CONSTRUCTIVE  
18          DISCUSSIONS ABOUT DATA SOURCES, AND WHAT INSIDE THOSE SOURCES  
19          SHOULD BE PRESERVED, SHOULD IT BE EVERYTHING, SHOULD IT BE  
20          SELECT FIELDS, THE TIME PERIOD FOR PRESERVATION, AND THE LIKE.

21          AND IT -- IT WAS SURPRISING TO ME, AS I RECEIVED THE  
22          SPECIAL MASTER'S REPORTS, HIS REPORTS TO ME DURING THIS  
23          PROCESS, THAT THAT WAS NOT HAPPENING AND THAT WAS NOT COMING  
24          TOGETHER.

25          SO WHERE THE PARTIES WERE LEFT, BY THEIR OWN, BY THEIR OWN

1 ACTIONS, OR INACTIONS, WAS, AGAIN, AS TIME MARCHED ON AND WE  
2 NEARED THE CLOSE OF DISCOVERY IN THIS CASE, WAS, AT MY  
3 INSTRUCTION, FOR THE SPECIAL MASTER TO DEVELOP A PRESERVATION  
4 PLAN AND THEN WE WOULD GET INPUT FROM THE PARTIES THROUGH THE  
5 RULE 53 PROCESS.

6 AND THAT IS HOW WE GOT HERE.

7 NOW, OF COURSE, THE SPECIAL MASTER HAS PUT TOGETHER, WITH  
8 SOME THOUGHT AND CARE, CONSTRUCTED A PRESERVATION PLAN, AND NOW  
9 THE PARTIES WANT TO USE THAT AS A STARTING POINT, AND I SEE  
10 THAT ON BOTH SIDES, TO BE CANDID. START AT THAT, AND NOW THEY  
11 WANT TO NOT MAKE REFINEMENTS, BUT SIGNIFICANT CHANGES, AND I  
12 SEE THAT ON BOTH SIDES.

13 SO I AM -- THAT'S HOW I SEE WHERE WE ARE STARTING, AND I  
14 AM MINDFUL OF THAT.

15 AND IN LOOKING AT THAT ISSUE AND LOOKING AT THE PLAN, AS I  
16 HAVE IN RECENT WEEKS, I THOUGHT IT WAS -- IT WILL BE MOST  
17 HELPFUL TO THE COURT, IN REVIEWING AND ASSESSING THE ADEQUACY  
18 OF THE PLAN AND WHETHER OR NOT THERE ARE NEEDS FOR REFINEMENT,  
19 TO START WITH THE BIGGEST LEGAL HURDLE AS I SEE IT, NOT THE  
20 BIGGEST, BUT THE MOST IMMEDIATE LEGAL HURDLE IN THIS CASE,  
21 WHICH IS CLASS CERTIFICATION.

22 AND I APPRECIATE THAN IN BROWN, THAT ISSUE HAS NOT YET  
23 BEEN BRIEFED.

24 HOWEVER, WHERE I WANT PLAINTIFFS TO BEGIN IS TO TELL THE  
25 COURT HOW YOU INTEND TO DEMONSTRATE A CLASS, AND THEN HOW THE

1 PRESERVATION PLAN AFFECTS THAT APPROACH, AND THEN WE'LL GO FROM  
2 THERE.

3 BUT ANY CRITICISMS OR CONCERN THAT YOU HAVE ABOUT THE  
4 PROPOSAL FROM THE SPECIAL MASTER HAS TO BE TIED BACK TO HOW YOU  
5 INTEND TO DEMONSTRATE THE CLASS. I NEED TO SEE THAT LINK,  
6 BECAUSE THEN I CAN BEGIN TO ASSESS WHETHER OR NOT THAT IS A  
7 NECESSARY MODIFICATION.

8 AND THEN MOVING PAST NOT JUST -- I MEAN, IT'S PART OF IT,  
9 OF COURSE, AS YOU ALL KNOW, BUT WE TALK ABOUT CLASS  
10 CERTIFICATION, BUT I WANTED TO MOVE A LITTLE BIT OUT OF  
11 RULE 23, AND THAT LEADS TO MY SECOND QUESTION OF, OKAY, IF  
12 WE'RE TALKING ABOUT DAMAGES AND LIABILITY, PROVING UP OR  
13 DEFENDING AGAINST THOSE ELEMENTS, AGAIN, HOW DOES THE PLAN  
14 ALLOW FOR THAT, OR WHAT IS A SIGNIFICANT CONCERN YOU HAVE IN  
15 THE PLAN?

16 I THINK IT'S FAIR TO SAY THAT ALL PARTIES ON BOTH SIDES IN  
17 BOTH CASES CAN ASSUME THAT YOU'RE NOT GOING TO GET EVERYTHING  
18 ON YOUR LIST OF OBJECTIONS. SO I ENCOURAGE PARTIES, AS ALWAYS,  
19 TO PRIORITIZE AND LINK WHAT YOU NEED OR WHAT YOU -- WHAT  
20 CHANGES YOU THINK YOU NEED TO HOW THE CLASS -- HOW THE CASE IS  
21 NOW GOING TO BE PUT TOGETHER. DISCOVERY IS ESSENTIALLY CLOSED,  
22 SO THIS OUGHT TO BE ABLE TO BE AN INFORMED DISCUSSION.

23 ALL RIGHT. SO WITH THAT, WE'LL START WITH PLAINTIFFS. AS  
24 I SAID, I'M ALLOWING ROUGHLY 75 MINUTES. I DO THAT HALF AN  
25 HOUR FOR THE PLAINTIFFS, HALF AN HOUR FOR THE DEFENDANTS, THAT

1 GIVES US A LITTLE TIME FOR SOME Q&A AND QUESTIONS.

2 I HAVE INVITED BOTH MR. BRUSH AND MR. SCHMIDT TO ASK  
3 QUESTIONS AS COUNSEL ARE PRESENTING IF THERE'S A POINT THAT  
4 THEY WANT CLARIFICATION ON, AND JUST TO SIMPLY LITERALLY RAISE  
5 THEIR PHYSICAL HAND, NOT THEIR ZOOM HAND, BECAUSE I'LL SEE  
6 THAT, AND ASK FOR CLARIFICATION, OR COMMENT IF THERE'S SOME  
7 DISCUSSION POINT THAT WOULD HELP TO INFORM THE SPECIAL MASTER  
8 GOING FORWARD, AND OBVIOUSLY I WILL BE DOING THE SAME. ALL  
9 RIGHT?

10 SO WITH THAT, MS. BONN, WHO'S GOT THE LEAD FOR YOUR TEAM  
11 TO GET US STARTED?

12 MS. BONN: I DO, YOUR HONOR.

13 AND IF IT WOULD BE HELPFUL, WHAT WE HAD ANTICIPATED DOING  
14 IS THAT I WOULD GIVE AN OVERVIEW OF PLAINTIFFS' POSITION ON THE  
15 THREE QUESTIONS THAT YOUR HONOR RAISED AND TRY TO KEEP IT TO BE  
16 A PRETTY SUCCINCT OVERVIEW, AND THEN MR. MAO IS PREPARED TO  
17 DISCUSS OUR RESPONSE ON QUESTION 1 IN GREATER DETAIL.

18 THE COURT: OKAY.

19 MS. BONN: MR. FRAWLEY AND MR. MCGEE ARE PREPARED TO  
20 DISCUSS OUR RESPONSE ON QUESTION 2 IN GREATER DETAIL, AND THEN  
21 I'LL COME BACK ON QUESTION 3.

22 THE COURT: ALL RIGHT. JUST KEEP MY TIMEFRAME IN  
23 MIND, PLEASE.

24 MS. BONN: ABSOLUTELY, YOUR HONOR.

25 THE COURT: THANK YOU.

1 MS. BONN: AND I'LL START WITH QUESTION 1, WHICH IS  
2 ALSO ONE YOUR HONOR JUST REITERATED, ABOUT HOW DOES THIS RELATE  
3 TO CLASS CERTIFICATION? WHAT ARE YOU ASKING FOR AND HOW DOES  
4 IT RELATE?

5 AND WHAT I WANT TO PUT INTO CONTEXT, AND MR. MAO WILL  
6 EXPLAIN IN GREATER DETAIL, IS THAT GIVEN WHERE WE ARE, I DON'T  
7 THINK PLAINTIFFS AFFIRMATIVELY, FOR OUR CLASS CERTIFICATION  
8 MOTION, INTEND TO RELY ON SAMPLED DATA OR, FRANKLY, OTHER DATA.

9 I THINK WHERE THIS DATA ISSUE COMES INTO PLAY -- EXCUSE  
10 ME -- OTHER DATA THAT GOOGLE HAS NOT PRODUCED.

11 WE DO HAVE EXPERTS WHO RELY ON DATA THAT WAS PRODUCED  
12 DURING DISCOVERY.

13 BUT WHERE THIS COMES INTO PLAY, I THINK, IS THAT -- AND  
14 THE NINTH CIRCUIT IS CLEAR THAT UNDER BRISENO VERSUS CONAGRA,  
15 THERE IS NO ASCERTAINABILITY REQUIREMENT. AND WHAT THE NINTH  
16 CIRCUIT SAID IN CONAGRA IS THAT OFTEN IN CLASS ACTIONS, EITHER  
17 AFTER A CLASS ACTION SETTLEMENT OR POTENTIALLY AFTER AN  
18 AGGREGATED DAMAGE AWARD AND VERDICT, THERE MAY BE A CLAIMS  
19 PROCESS IN WHICH CLAIMANTS CAN COME FORWARD AND SUBMIT A CLAIMS  
20 FORM UNDER PENALTY OF PERJURY SAYING, YOU KNOW, I HAVE A CLAIM,  
21 I THINK I'M A MEMBER OF A CLASS.

22 IN THIS CASE, MARY SMITH COULD COME FORWARD AND SAY, I  
23 BROWSED INCOGNITO IN 2018.

24 AND WHAT WE NOW KNOW IS THAT GOOGLE ONCE HAD DATA, AND  
25 MR. MAO WILL EXPLAIN IN MORE DETAIL, THAT GOOGLE COULD HAVE

1 USED IN ANY SUCH CLAIMS PROCESS TO EITHER VERIFY OR CHALLENGE  
2 ANY SUCH CLAIM THAT IS SUBMITTED IN THAT CLAIMS PROCESS.

3 BUT WHAT HAS HAPPENED IS THAT THAT DATA, WHICH ONCE  
4 EXISTED, MUCH OF IT HAS ALREADY BEEN DELETED AND IS BEING  
5 DELETED ON AN ONGOING BASIS.

6 A SAMPLE OF DATA BEING PRESERVED ON A GOING FORWARD BASIS  
7 WOULD NOT ASSIST GOOGLE IN THE EFFORT THEY WISH TO MAKE IN A  
8 CLAIMS PROCESS CHALLENGING CLAIMANTS BECAUSE THE ONLY DATA THAT  
9 WOULD BE PRESERVED ON A GOING FORWARD BASIS IS FOR A SAMPLE OF  
10 10,000. SO IF A CLAIMANT CAME FORWARD AND THEY WERE NOT IN THE  
11 SAMPLE, AGAIN, GOOGLE WOULD NOT HAVE IN ITS POSSESSION ANY  
12 LONGER THE DATA IT MAY WANT TO EITHER VERIFY OR CHALLENGE THE  
13 CLAIM BEING MADE.

14 AND ONE OF THE OTHER CRITICAL THINGS WE'VE POINTED OUT IS  
15 THAT AS IT'S ARTICULATED, THE SAMPLING PLAN PROPOSED CALLS FOR  
16 RANDOM SAMPLES OUT OF DISPARATE LOGS, AND BECAUSE THE SAMPLING  
17 ISN'T DONE CONSISTENTLY BY I.P. ADDRESS AND USER AGENT PAIRS  
18 ACROSS LOGS, IT WOULD ALSO ELIMINATE ANY ABILITY THAT MAY HAVE  
19 EXISTED TO LINK UP DATA BETWEEN THE PSEUDONOMIZED OR B LOGS,  
20 UNAUTHENTICATED INCOGNITO LOGS, AND THE AUTHENTICATED PERSONAL  
21 LOGS WHICH WE TALKED ABOUT FAIRLY EXTENSIVELY AT LAST WEEK'S  
22 HEARING.

23 AND SO OUR POINT ON CLASS CERTIFICATION IS THAT THIS IS  
24 SOMETHING THAT GOOGLE MAY VERY WELL HAVE WANTED TO USE IN THE  
25 CLAIMS PROCESS, BUT THEY HAVE DELETED THAT DATA, AND SAMPLING

1 OR PRESERVING A MERE SAMPLE OF DATA GOING FORWARD, AND IN  
2 PARTICULAR WITH THE SAMPLING METHOD THAT HAS BEEN PROPOSED,  
3 WILL NOT ASSIST GOOGLE.

4 AND SO OUR POINT, AS TO THIS CLASS CERTIFICATION QUESTION,  
5 IS A SIMPLE ONE: GOOGLE CANNOT RELY ON WHAT IT CHOSE TO DELETE  
6 AND NOT PRODUCE TO THE PLAINTIFFS DURING DISCOVERY, NOR BENEFIT  
7 FROM THEIR DELETION AND REFUSAL TO PRODUCE THAT DATA.

8 THAT'S A VERY SIMPLE PRINCIPLE UNDER RULE 37 WHICH HAS  
9 BEEN HEAVILY BRIEFED BEFORE YOUR HONOR.

10 AND I WOULD LIKE MR. FRAWLEY, IF HE COULD SHARE HIS  
11 SCREEN, TO SHOW A SLIDE. IT'S A PRINCIPLE THAT GOOGLE APPEARS  
12 TO HAVE MADE A SLIGHT ADMISSION ABOUT IN ITS BRIEF.

13 IF YOU COULD TURN TO THE NEXT SLIDE.

14 GOOGLE SAYS IN ITS BRIEF, GOOGLE IS WILLING TO STIPULATE  
15 THAT NEITHER PARTY CAN RELY ON THE ABSENCE OF PRESERVED GOOGLE  
16 DATA TO SUPPORT OR OPPOSE ANY ARGUMENT.

17 AND IF YOU COULD UNSHARE, MR. FRAWLEY.

18 I MEAN, I THINK THE ISSUE HERE IS PLAINTIFFS HAVE A LOT TO  
19 SAY BASED ON WHAT WE HAVE BEEN ABLE TO DEMONSTRATE WITH THE  
20 DATA THAT HAS BEEN PRODUCED AND WHAT THAT REFLECTS ABOUT WHAT  
21 COULD HAVE BEEN DONE WITH OTHER DATA THAT HAS BEEN DELETED.

22 WHY PLAINTIFFS SHOULD BE BARRED FROM MAKING ANY AND ALL  
23 ARGUMENTS THAT WE CAN BASED ON THE EVIDENCE WE HAVE RECEIVED I  
24 SEE NO BASIS FOR.

25 BUT GOOGLE HAS NOW SAID THAT IT IS WILLING TO MAKE THAT

1 STIPULATION IN THEORY AS TO WHAT IT MAY ARGUE, AND YET LAST  
2 WEEK WE SAT IN COURT AND LISTENED TO GOOGLE ARGUE ALL DAY THAT  
3 INCOGNITO DETECTION BITS THAT HAVE EXISTED SINCE 2017 AND  
4 [REDACTED] LOGS ARE UNRELIABLE AND THAT [REDACTED] DATA HAS BEEN  
5 DELETED ON A [REDACTED] ROLLING CYCLE EVER SINCE.

6 SO ON THE ONE HAND, GOOGLE SEEMS TO RECOGNIZE THE BASIC  
7 PRINCIPLE OF FAIRNESS, THAT IT CANNOT RELY OR MAKE ARGUMENTS  
8 ABOUT WHAT HAS BEEN DELETED AND NOT PRODUCED; AND YET IN  
9 ACTUALITY, IN THIS CASE IN REAL TIME, WE ARE SEEING THAT THEY  
10 WANT TO MAKE ARGUMENTS AS TO WHICH WE NOW ARE DEPRIVED OF DATA  
11 WE MAY OTHERWISE HAVE USED.

12 THAT BRINGS ME TO QUESTION 2, WHICH I'LL GIVE AN OVERVIEW  
13 OF. HOW COULD SAMPLED DATA POTENTIALLY BE USED IN CONNECTION  
14 WITH QUESTIONS OF LIABILITY AND DAMAGE?

15 AND I THINK HERE IT'S IMPORTANT TO NOTE A DISTINCTION THAT  
16 I THINK YOUR HONOR SOMEWHAT POINTED TO AT THE OUTSET, WHICH IS  
17 A DISTINCTION BETWEEN PRESERVATION AND PRODUCTION DURING  
18 DISCOVERY.

19 DURING THE DISCOVERY PERIOD, WHICH MR. FRAWLEY WILL  
20 OUTLINE IN GREATER DETAIL, PLAINTIFFS REPEATEDLY ASKED FOR A  
21 PRODUCTION FROM GOOGLE OF SAMPLED CLASS MEMBER DATA IN DISPUTES  
22 P6 AND P16 A YEAR AGO IN MAY OF LAST YEAR. GOOGLE OBJECTED,  
23 REFUSED TO PRODUCE THAT DATA, AND ITS OBJECTION WAS SUSTAINED.

24 AND SO AS A RESULT OF GOOGLE'S DECISION, WE WERE DENIED  
25 THAT DISCOVERY DURING THE DISCOVERY PERIOD.

1 AND SO WE HAD TO ADJUST OUR PLANS, OUR EXPERT APPROACH,  
2 OUR QUESTIONING DURING DEPOSITIONS, BECAUSE DESPITE THE FACT  
3 THAT WE SOUGHT A PRODUCTION OF SAMPLED DATA, NOT THAT MERELY A  
4 SAMPLE SHOULD BE PRESERVED, BUT TO BE CLEAR, A PRODUCTION OF  
5 SAMPLED DATA, WE WERE DENIED THAT.

6 AND SO, YOU KNOW, WE HAD TO TAKE OTHER PATHS IN OUR EFFORT  
7 TO PROVE LIABILITY AND DAMAGES.

8 BUT WHERE THIS SAMPLING COMES INTO PLAY NOW IS THAT IT WAS  
9 ONLY AFTER DISCOVERY, FACT DISCOVERY CLOSED IN THIS CASE THAT  
10 GOOGLE FIRST SUGGESTED THAT IT SHOULD PRESERVE ONLY A SAMPLE OF  
11 DATA. THIS CAME ABOUT AFTER DISCOVERY WAS CLOSED.

12 AND SO I SUPPOSE IF GOOGLE'S SUGGESTION IS IT WILL  
13 PRESERVE A SAMPLE OF DATA, THE IDEA IS MAYBE THAT DATA WOULD BE  
14 PRODUCED, AND THAT IS UNFAIRLY PREJUDICIAL TO THE PLAINTIFFS.  
15 DISCOVERY IS OVER. DEPOSITIONS ARE OVER. EXPERT REPORTS FROM  
16 THE PLAINTIFFS, AND GOOGLE'S OPENING REPORTS, ARE IN.

17 AND SO NOW, FOR GOOGLE, HAVING REFUSED TO PRODUCE SAMPLED  
18 DATA, DESPITE OUR REQUEST DURING DISCOVERY, TO NOW PIVOT AND  
19 SAY THEY WANT TO PRODUCE IT AFTER DISCOVERY IS CLOSED, AFTER  
20 THEY'VE SEEN OUR EXPERT REPORT, AND LARGELY TO DO SO IN SOME  
21 SENSE IN A BLACK BOX WHEN WE HAVE SEEN, THROUGH VARIOUS WAYS  
22 THAT HAVE BEEN BRIEFED BEFORE YOUR HONOR, THAT WE HAVE AMPLE  
23 REASON TO QUESTION THE PROCESSES THAT GOOGLE HAS PUT IN PLACE  
24 ON THEIR END, AND YET, WE WOULD BE IN A POSITION WHERE WE'RE  
25 UNABLE TO TEST WHATEVER SAMPLING THEY DO IN DEPOSITIONS OR

1           THROUGH OUR EXPERTS.

2           AND SO ESSENTIALLY WHAT THIS AMOUNTS TO IS ALLOWING GOOGLE  
3           TO BENEFIT FROM ITS DECISION TO DELETE DATA AND ITS OBJECTION  
4           TO PRODUCING DATA DURING DISCOVERY, AND THEN DO IT AFTER THE  
5           FACT, AFTER DISCOVERY, TO BACKFILL THEIR OWN ARGUMENTS AND  
6           THEIR OWN DEFENSES.

7           AND ONCE AGAIN, UNDER RULE 37, GOOGLE CANNOT RELY ON WHAT  
8           IT REFUSED TO PRODUCE AND REFUSED TO PRESERVE.

9           AND FINALLY, THAT BRINGS US TO QUESTION 3, WHAT CAN BE  
10          DONE TO AMELIORATE THIS? AND THERE ARE A FEW POINTS I WOULD  
11          LIKE TO MAKE.

12          POINT ONE IS THAT FOR THE DATA THAT HAS ALREADY BEEN  
13          DELETED AND IS BEING DELETED ON AN ONGOING BASIS, A GOING  
14          FORWARD PRESERVATION PLAN CANNOT BRING DATA THAT HAS ALREADY  
15          BEEN DELETED BACK. AND WE HAVE SET FORTH IN OUR PRIOR PAPERS,  
16          WHICH YOUR HONOR HAS AND HAS HAD A HEARING ON, WHAT SANCTIONS  
17          AND PRECLUSION ORDERS WE THINK NEED TO FLOW FROM THAT.

18          ON A GOING FORWARD BASIS, TO THE EXTENT THAT A  
19          PRESERVATION PLAN IS NECESSARY, WHAT WE WILL DISCUSS IS THAT  
20          GOOGLE ADMITTED, FOR THE FIRST TIME ON MARCH 15TH, AFTER FACT  
21          DISCOVERY CLOSED, THAT, IN FACT, IT DOESN'T HAVE TO SIMPLY  
22          PRODUCE EXISTING -- EXCUSE ME -- PRESERVE EXISTING LOGS IN  
23          THEIR ENTIRETY.

24          IT HAS THE CAPABILITY OF PRODUCING WHAT WE'RE COLLOQUIALLY  
25          CALLING A SUPER LOG WHERE IT CAN BASICALLY SELECT PARTICULAR

1 FIELDS ACROSS LOGS, DEDUPE THEM, ESSENTIALLY, AND PUT IN A  
2 NARROW SET IN WHAT EFFECTIVELY IS A NEWLY CREATED LOG, BUT  
3 THAT'S BORROWING FROM OTHER LOGS' DATA.

4 AND WE HAVE PUT IN A DECLARATION FROM MR. THOMPSON THAT IT  
5 WOULD NOT BE BURDENSOME FOR THEM TO PRESERVE THE DATA  
6 ASSOCIATED WITH INCOGNITO TRAFFIC THAT IS FLAGGED BY THE  
7 INCOCGNITO DETECTION BITS AFTER DEDUPING AND LIMITING TO  
8 RELEVANT FIELDS AND PRESERVING DATA THAT COULD BE LINKED TO  
9 THOSE ENTRIES WITH I.P. ADDRESS AND USER AGENT STRING FROM  
10 P LOGS.

11 GOOGLE IN RESPONSE PUT IN A DECLARATION FROM A  
12 MR. HARTING, WHO IS IN CHARGE OF AN AD MANAGER TEAM AT GOOGLE.  
13 HE IS ANOTHER PREVIOUSLY UNDISCLOSED WITNESS. HE DID NOT  
14 APPEAR IN GOOGLE'S LIST OF 226 CUSTODIANS.

15 AND NEVERTHELESS, IN HIS DECLARATION, HE SPEAKS TO THE  
16 BURDEN ASSOCIATED WITH PRESERVING ALL LOGS IN THEIR ENTIRETY.

17 HE DOES NOT ADDRESS, LET ALONE DISPUTE, A SINGLE POINT  
18 MR. THOMPSON MADE ABOUT THE FEASIBILITY OF CREATING A SUPER LOG  
19 THAT DEDUPES, LIMITS FIELDS, AND TARGETS INCOCGNITO DATA. HE IS  
20 UTTERLY SILENT.

21 SO THE UNREBUTTED RECORD BEFORE THIS COURT IS THAT IT  
22 WOULD NOT BE BURDENSOME FOR GOOGLE TO DO THAT.

23 AND, IN FACT, MR. HARTING SEEMS TO SUGGEST IN HIS OWN  
24 DECLARATION THAT THE WORK AND EFFORT REQUIRED TO PERFORM A  
25 SAMPLING PLAN MIGHT BE EQUALLY BURDENSOME IN TERMS OF THE

1 ENGINEERING TIME.

2 AND SO THAT I THINK IS A HIGH LEVEL OVERVIEW OF OUR  
3 POSITION AND WHAT WE INTEND TO ARGUE.

4 I THINK THAT IN TERMS OF THE CREATION OF A SUPER LOG, TO  
5 THE EXTENT THAT THE COURT THINKS THAT IS WARRANTED, I THINK  
6 THAT IS A PROCESS THAT WE, FRANKLY, NEED TO HAVE FURTHER  
7 DISCUSSION ABOUT TO THE POINT THAT YOUR HONOR MADE AT THE  
8 OUTSET, WHICH IS THAT WE NEED A FREER EXCHANGE OF INFORMATION.  
9 WE NEED TO BE ABLE TO HAVE A PRODUCTIVE DIALOGUE. WE NEED TO  
10 KNOW WHAT FIELDS ARE AVAILABLE, HOW LONG THEY'RE PRESERVED,  
11 WHAT IT WOULD TAKE TO CREATE THE KIND OF SCRIPT THAT'S NEEDED.  
12 THAT KIND OF DIALOGUE WOULD NEED TO HAPPEN.

13 SO THAT'S A HIGH LEVEL OVERVIEW OF OUR PRESENTATION.

14 UNLESS YOUR HONOR HAS QUESTIONS FOR ME, I'D LIKE TO TURN  
15 IT OVER TO MR. MAO TO ADDRESS OUR POINT 1 IN A LITTLE BIT  
16 GREATER DETAIL.

17 THE COURT: THANK YOU, MS. BONN.

18 MR. MAO.

19 MR. MAO: SORRY, YOUR HONOR. I'M TRYING TO GET THE  
20 LAY OF THE LAND, AND THAT REQUIRES A FEW CLICKS ON ZOOM.

21 MR. FRAWLEY, CAN I TROUBLE YOU TO PUT UP SLIDE 4 FOR US?

22 SO, YOUR HONOR, YOU MIGHT REMEMBER THIS SLIDE FROM THE  
23 ORDER TO SHOW CAUSE HEARING, AND I WANT TO USE THIS AS A  
24 STARTING POINT.

25 THE REASON WHY I WANT TO USE THIS AS A STARTING POINT IS

1           WHAT YOU'RE GOING TO HEAR MR. FRAWLEY, AND ALSO MR. MCGEE, TALK  
2           ABOUT IS THE LAST PAST YEAR, EVER SINCE I BELIEVE MARCH OF LAST  
3           YEAR, THE CHALLENGES AND THE REQUESTS IN WHICH PLAINTIFFS HAVE  
4           BEEN ASKING FOR GOOGLE TO PRODUCE IN TERMS OF INFORMATION,  
5           TECHNICAL DOCUMENTATION, AND DATA FOR IT TO BE ABLE TO BOLSTER  
6           AND SUPPORT ITS OWN DEFENSES IN RESPONSE TO PLAINTIFFS' AND  
7           CLASS MEMBERS' -- A TESTAMENT TO THEIR HAVING USED INCOGNITO  
8           MODE AND HAVING BEEN INTERCEPTED BY GOOGLE TECHNOLOGIES.

9           THE REASON WHY WE WANTED THAT WAS BECAUSE WE WANTED TO  
10          TEST WHAT GOOGLE WAS GOING TO ARGUE IN ITS DEFENSE AND WHICH IT  
11          HAS SIGNALLED IN MULTIPLE PAPERS, AND ALSO IN PROCEEDINGS IN  
12          FRONT OF YOU.

13          AND THE REASON WHY WE WANT TO TAKE ABOUT THE JOINING OF  
14          DATA IS BECAUSE WHAT WE, PLAINTIFFS, HAVE ACTUALLY EXPECTED  
15          GOOGLE TO DO WAS THAT THEY WERE GOING TO USE THEIR LOGS TO  
16          EITHER DISPUTE CERTAIN CLASS MEMBERS EVER HAVING USED  
17          INCOGNITO, OR THEY HAVE NOT USED INCOGNITO.

18          THE REASON WHY WE HAD THIS CHART DURING THE OSC WAS ONE OF  
19          THE METHODS IN WHICH WE WANTED TO DEMONSTRATE BY WHICH CLASS  
20          MEMBER TRAFFIC INDIVIDUAL EVENT COULD ACTUALLY BE IDENTIFIED  
21          WAS USING AT LEAST TWO LOGS PUT SIDE TO SIDE, BUT SOMETIMES  
22          USING JUST ONE LOG.

23          SO THE SPECIFIC INSTANCE WE WERE USING THERE WAS ACTUALLY  
24          I.P. ADDRESS AND USER AGENT STRINGS, WHICH IS SOMETHING I  
25          WANTED TO TALK ABOUT.

1           BUT I JUST WANTED TO NOTE THAT THAT WAS JUST ONE METHOD,  
2           BECAUSE AS YOU CAN SEE FROM THIS, ACROSS THESE LOGS YOU HAVE  
3           PSEUDONYMOUS ID'S -- SORRY -- YOU HAVE PSEUDONYMOUS ID'S, WHICH  
4           ARE BASICALLY, WHICH YOU'VE HEARD IN MULTIPLE HEARINGS AS BEING  
5           PPID'S, PEOPLE LOGGING IN, LOGGING OUT OF THIRD PARTY  
6           WEBSITES -- PUBLISHER PROVIDED ID'S IS WHAT PPID'S STANDS  
7           FOR -- AND THESE ARE THIRD PARTY ID'S WHICH GOOGLE TRACKS, AND  
8           THESE ARE GOING TO BE ABLE TO TRACK USERS ACROSS MULTIPLE LOG  
9           SOURCES AND IDENTIFY THEM BY THEIR LOGINS ACROSS MULTIPLE  
10           SITES.

11           YOU ALSO HAD SOMETHING IN WHICH YOU'VE HEARD THE CALHOUN  
12           FOLKS, IN ADDITION TO US, TALK ABOUT, WHICH IS THE UMA DATA, OR  
13           ACRONYM FOR USER METRIC ANALYSIS, UMA, WHICH STANDS FOR THE  
14           TYPE OF IDENTIFIER THAT'S TIED TO YOUR CHROME INSTANCE, YOUR  
15           CHROME APPLICATION, THAT'S GOING TO BE UNIQUELY IDENTIFYING FOR  
16           THE USERS AS WELL.

17           BUT WHAT WE WANTED TO TALK ABOUT HERE IN TERMS OF JOINING  
18           DATA WAS ONE OTHER METHOD WHICH WE THOUGHT GOOGLE WOULD TRY TO  
19           USE TO DISPROVE WHETHER OR NOT ANY PARTICULAR CLASS MEMBER WAS  
20           ACTUALLY ENGAGED IN INCOGNITO ACTIVITIES, AND I WANTED TO USE  
21           THIS SPECIFIC EXAMPLE BECAUSE I UNDERSTAND THERE ARE SOME  
22           DISPUTES REGARDING WHETHER OR NOT GAIA AND ZWIEBACK LOGS ARE  
23           SEARCH LOGS AND MAY ACTUALLY BE RELEVANT, BUT I WANTED TO SHOW  
24           YOU EXACTLY HOW THIS COMES INTO PLAY.

25           MR. FRAWLEY, IF I COULD TROUBLE YOU TO MOVE NOW TO SLIDE

1 NUMBER 8.

2 OKAY. SO SLIDE NUMBER 8 IS ACTUALLY, THIS IS ACTUALLY MY  
3 OWN GOOGLE ACCOUNT INFORMATION, YOUR HONOR. ON THE LEFT-HAND  
4 SIDE IS LITERALLY, IF I WERE TO DOWNLOAD THIS FROM MY ACCOUNT,  
5 YOU WOULD SEE ON THE TOP LEFT-HAND SIDE OF THE SPREADSHEET --  
6 IF YOU HAVE A GOOGLE ACCOUNT, YOUR HONOR, YOU AND ANYBODY, YOU  
7 KNOW, CONDUCTING RESEARCH FOR YOU COULD VERIFY THIS -- YOU  
8 WOULD SEE THAT YOUR GOOGLE ID POPS UP, YOU WOULD SEE YOUR OTHER  
9 IDENTIFIERS POP UP, AND THEN WHAT YOU'RE GOING TO SEE IN THE  
10 COLUMNS BELOW THAT ARE ACTUALLY TIME STAMPS, YOUR I.P. ADDRESS,  
11 YOUR USER AGENT STRING, AND YOUR LOG INS AND LOG OUTS ARE  
12 BASICALLY TIED TO YOUR GOOGLE ID.

13 AND YOU CAN SEE VERY SIMPLE KIND OF LIKE LOGS, IT'S GOING  
14 TO BE A FEW PAGES, AND FROM WHAT I CAN SEE, AT LEAST FOR  
15 MYSELF, IT -- IT'S GOING BACK UP TO PAGES ON THE FORM.

16 AND THIS IS ONE OF THE REASONS WHY WE WERE TALKING ABOUT  
17 I.P. ADDRESSES AND THE USER STRING, BECAUSE USING THESE  
18 IDENTIFIERS, OKAY, YOU'RE GOING TO BE ABLE TO LOCATE CLASS  
19 MEMBERS IN TERMS OF WHAT THEY WERE DOING AT THE TIME THEIR I.P.  
20 ADDRESS, AND NOTE NOTE WHAT THEIR ACTIVITIES MAY BE IN  
21 [REDACTED] LOGS, IN ADDITION TO THE P LOGS.

22 ONE OF THE OTHER REASONS WHY WE WANT TO TALK ABOUT THIS IS  
23 BECAUSE --

24 IF YOU DON'T MIND MOVING ON TO SLIDE 5.

25 SORRY, THERE'S A LITTLE BIT OF LAG ON ZOOM.

1                   MR. FRAWLEY, CAN I TROUBLE YOU TO MOVE ON? SORRY, MAYBE I  
2                   WAS ON A LAG.

3                   -- IS THAT GOOGLE ITSELF ADMITS THAT I.P. ADDRESS AND USER  
4                   AGENT STRINGS WILL BE USED TO JOIN IDENTIFIED USERS.

5                   HERE ARE A NUMBER OF QUOTES, AND THESE ARE ALL FROM GOOGLE  
6                   DOCUMENTATION AND INTERNAL CORRESPONDENCES. FIRST ONE, I.P. IS  
7                   A VIABLE TRACKING VECTOR; SECOND ONE, SINCE I.P. ADDRESSES, YOU  
8                   KNOW, OFTEN UNIQUELY IDENTIFY USERS; YOU CAN SEE THERE A THIRD  
9                   ONE, I.P. ADDRESSES AND USER AGENT STRINGS REVEAL INDIVIDUAL  
10                  USER WITH HIGH PROBABILITY; AND, LASTLY, USER AGENT STRINGS AND  
11                  I.P. ADDRESSES UNIQUELY IDENTIFY A PARTICULAR USER'S BROWSER.

12                  NEXT SLIDE, PLEASE.

13                  THIS ISN'T JUST INTERNAL CORRESPONDENCE. THESE ARE ALSO  
14                  THINGS IN WHICH GOOGLE EMPLOYEES ARE SPECIFICALLY FLAGGING  
15                  THOSE PRIVACY RISKS.

16                  FIRST, YOU HAVE THEIR --

17                  THE COURT: MR. MAO, LET ME -- I APPRECIATE THAT, AND  
18                  I RECOGNIZE A NUMBER OF THESE EXCERPTS.

19                  BUT, AGAIN, WHAT I'M INTERESTED IN IS, WHAT IS IT ABOUT  
20                  THE PRESERVATION PLAN THAT WORKS AGAINST -- I MEAN, MS. BONN  
21                  SAID, WELL, PLAINTIFFS DON'T INTEND TO USE SAMPLING, THAT'S NOT  
22                  REALLY A FACTOR IN HOW YOU WILL PUT YOUR CLASS TOGETHER, SO  
23                  THAT'S FINE.

24                  BUT SHE SAID, WELL, BUT GOOGLE, THIS WILL HARM GOOGLE,  
25                  GOOGLE WON'T BE ABLE TO RELY ON THIS WHERE THEY, PERHAPS, COULD

1 HAVE USED THE DATA TO CHALLENGE A CLASS.

2 SO I'M -- I APPRECIATE WHAT YOU'RE SAYING, BUT I'M NOT  
3 SEEING HOW IT LINKS BACK TO THE CLASS ISSUE.

4 MR. MAO: SURE.

5 YOUR HONOR, THIS IS WHY MS. BONN REFERRED BACK TO THE  
6 ORDER TO SHOW CAUSE HEARING, RIGHT. WHAT YOU WERE HEARING  
7 THERE, YOUR HONOR, WAS GOOGLE TALKING ABOUT HOW THE DATA DID  
8 NOT PRODUCE -- OR THE TECHNICAL DOCUMENTS WHICH THEY DID NOT  
9 PRODUCE WHICH SHOW X OR Y AND THAT CLASS MEMBERS CAN NOW BE  
10 IDENTIFIED.

11 THE PROBLEM HERE, YOUR HONOR, IS THAT WE HAVE SPECIFICALLY  
12 ASKED FOR THIS DATA TO BE ABLE TO VERIFY AND TEST AGAINST  
13 GOOGLE'S ALLEGATIONS.

14 AND THERE IS A QUESTION REGARDING, YOU KNOW, IF WE WERE TO  
15 DO SAMPLING, HOW WE SHOULD ACTUALLY VERIFY ANY ALLEGATIONS,  
16 ARGUMENTS, OR EXPERT TESTIMONY WHICH GOOGLE WOULD PUT FORWARD  
17 REGARDING THESE ISSUES, REGARDING IDENTIFIABILITY, OR REGARDING  
18 ANY OTHER DEFENSES WHICH IT MAY RAISE IN RESPONSE TO CLASS  
19 CERTIFICATION.

20 AND THIS IS WHY WE GO BACK TO WHAT GOOGLE SAID, RIGHT,  
21 WHICH IS THAT GOOGLE DID NOT GET TO USE, UNDER THAT RULE, WHAT  
22 THEY REFUSED TO PRODUCE OR REFUSED TO PRESERVE.

23 SO WE'RE TALKING ABOUT -- YES, I UNDERSTAND, YOUR HONOR,  
24 THAT I'M TALKING ABOUT HYPOTHETICALS HERE. BUT THESE  
25 HYPOTHETICALS ARE NOT CONJECTURAL BECAUSE YOU'VE HEARD GOOGLE

1 TALK ABOUT THIS DURING THE OSC HEARING, AND THAT IS SOMETHING  
2 WHICH HAS REPEATEDLY STATED THROUGHOUT THIS ENTIRE LITIGATION.

3 THE COURT: SO IF I'M UNDERSTANDING PLAINTIFFS'  
4 POSITION, IT'S THAT, OKAY, THE SAMPLING MODEL, IT'S NOT WHAT  
5 YOU WOULD DO, BUT IF THAT'S WHAT GETS ADOPTED, YOUR CONCERN IS  
6 WHETHER OR NOT THERE ARE RESTRICTIONS ON GOOGLE'S ABILITY -- ON  
7 GOOGLE'S ARGUMENTS GOING FORWARD BECAUSE IT'S NOT A WHOLESALE  
8 PRESERVATION.

9 IS THAT THE BOTTOM LINE?

10 MR. MAO: I THINK THERE'S A COUPLE OF NUANCES ON  
11 THAT, BUT I'LL LET MS. BONN FILL IN RIGHT AFTER I FINISH.

12 I THINK FIRST OF ALL, YOUR HONOR, I DO BELIEVE THAT  
13 MR. FRAWLEY AND MS. BONN ARE GOING TO COVER HOW WE ACTUALLY  
14 CANNOT SANCTION OR AGREE TO GOOGLE DESTROYING CLASS MEMBER  
15 DATA, AND THEREFORE, WE HAVE NEVER, EVER AGREED TO THAT.

16 BUT THE SECOND THING IS THAT A LOT OF THIS REALLY HAS TO  
17 DO WITH THE DEFENSE IN WHICH GOOGLE HAS MOUNTED SINCE THE  
18 BEGINNING OF THE CASE, AND THAT'S THE FUNDAMENTAL RULE OF  
19 EVIDENCE, RIGHT, WHICH IS THAT IF THEY ARE GOING TO MAKE AN  
20 ARGUMENT BASED UPON FACTS WHICH THEY ALLEGGE, THEY MUST PRESENT  
21 THE ALLEGED FACTS AND INFORMATION FOR DISCOVERY AND ASSESSMENT  
22 BY THE OTHER SIDE, AND THAT JUST HAS NOT HAPPENED.

23 SORRY, MS. BONN, YOU --

24 MS. BONN: YEAH, I AGREE WITH MR. MAO.

25 TO ANSWER YOUR HONOR'S QUESTION DIRECTLY, I THINK OUR

1 CONCERN IS THAT GOOGLE, AMONGST OTHER THINGS, IN OPPOSITION TO  
2 CLASS CERT WILL SAY TO THE JUDGE, THE CLASS SHOULD NOT BE  
3 CERTIFIED BECAUSE THERE IS NO WAY TO VERIFY WHETHER A  
4 PARTICULAR PERSON WAS IN INCOGNITO MODE OR NOT.

5 AND WE BELIEVE THAT IS A FUNDAMENTALLY UNFAIR ARGUMENT FOR  
6 THEM TO BE PERMITTED TO MAKE WHEN THEY HAVE BEEN DELETING THE  
7 DATA THAT WOULD BE NEEDED TO ACTUALLY ATTEMPT TO DO THAT.

8 AND IN THE ABSENCE OF THAT DATA, THEY BASICALLY WANT TO  
9 BENEFIT FROM IT BY TELLING THE COURT, "AND THEREFORE, IT'S A  
10 REASON TO DENY CLASS CERTIFICATION."

11 AND OUR POINT --

12 THE COURT: BUT PLAINTIFFS HAVE NEVER BEEN ABLE TO  
13 MAKE THAT LINK, I MEAN, THAT I'VE SEEN, TO BE ABLE TO TIE -- TO  
14 TIE THE INCOGNITO BIT INFORMATION THAT WE DISCUSSED AT GREAT  
15 LENGTH A COUPLE OF WEEKS AGO TO A SPECIFIC USER.

16 I APPRECIATE THAT THE EXPERT WHO TESTIFIED ON PLAINTIFFS'  
17 BEHALF SAID, WELL, YOU KNOW, THEORETICALLY IT COULD BE DONE.

18 BUT THAT FACTUAL BASIS HAS NEVER BEEN DEMONSTRATED.

19 MS. BONN: I WOULD LIKE TO ADDRESS THAT, YOUR HONOR.

20 WE HAVE PUT IN AN EXPERT REPORT FROM OUR EXPERT,  
21 MR. HOCHMAN, AND HE HAS DEMONSTRATED IT IN ACTUALITY WITH  
22 TESTING DATA THAT WE USED DURING THE SPECIAL MASTER PROCESS.

23 SO WE HAD OUR EXPERTS, WORKING WITH OUR PLAINTIFFS, TO  
24 GENERATE BOTH INCOGNITO AND REGULAR DATA AND, ON OUR SIDE,  
25 TRACK THE INCOGNITO AND REGULAR SESSIONS.

1 AND THEN WE'VE BEEN ABLE, WITH DATA THAT GOOGLE PRODUCED,  
2 TO DEMONSTRATE AFFIRMATIVELY THAT IT CAN BE LINKED UP WITH  
3 B LOG DATA THAT GOOGLE MAINTAINS.

4 AND I WILL GIVE ONE EXAMPLE THAT I THINK WE POINTED TO IN  
5 OUR MOST RECENT PAPER, BUT THE WEEKEND AFTER THE ORDER TO SHOW  
6 CAUSE HEARING, GOOGLE FOR THE FIRST TIME MADE A PRODUCTION OF  
7 [REDACTED] DATA WITH THE IS\_CHROME\_INCOGNITO FIELD POPULATED, AND  
8 WHAT WE SAW FROM EVERY SINGLE ENTRY THEY PRODUCED IS THAT IT  
9 WAS ACCURATE IN DETECTING WHEN OUR PLAINTIFFS AND OUR TEST DATA  
10 WERE IN INCOGNITO MODE, AND IT CAN BE LINKED UP TO OUR ACTUAL  
11 USERS USING A COMBINATION OF I.P. ADDRESS AND USER AGENT  
12 STRING.

13 IF THE COURT WOULD LIKE, WE WOULD BE HAPPY TO SUBMIT OUR  
14 EXPERT'S REPORT, AND POTENTIALLY A DECLARATION ON THIS VERY  
15 RECENT PRODUCTION OF DATA.

16 SO THE NOTION THAT WE HAVE NOT DEMONSTRATED THAT THIS IS  
17 POSSIBLE, WE THINK WE HAVE MADE A VERY STRONG DEMONSTRATION OF  
18 THAT, AND WE WOULD BE HAPPY TO SUBMIT OUR EXPERT REPORT TO THE  
19 EXTENT THAT WOULD BE HELPFUL TO YOUR HONOR TO REVIEW.

20 THE COURT: OKAY. SO -- BUT, AGAIN, GETTING BACK TO  
21 THE PRESERVATION PLAN AND THIS APPROACH OF SAMPLING, YOU  
22 STARTED THIS DISCUSSION, MS. BONN, BY SAYING, WE'RE NOT GOING  
23 TO USE SAMPLING WHEN WE PROVE UP THE CLASS, AND AS I UNDERSTAND  
24 THE ARGUMENTS THAT YOU ARTICULATED AND AS FLESHED OUT BY  
25 MR. MAO, IT'S, AGAIN, YOU'RE FOCUSED ON WHAT GOOGLE SHOULD NOT

1 BE ALLOWED TO DO, WHAT SAMPLING DOES NOT CAPTURE AND THAT  
2 GOOGLE SHOULD NOT BE ALLOWED TO RELY ON THAT.

3 I -- SO I TAKE THAT AS A CRITICISM OF SAMPLING, OR A  
4 CONCERN THAT SAMPLING WITHOUT SOME SAFEGUARDS WOULD -- MAY  
5 ALLOW OR MAY LEAD TO GOOGLE MAKING ARGUMENTS BASED ON DATA THAT  
6 WAS NOT PRESERVED.

7 AM I TRACKING THAT CONCERN?

8 MS. BONN: YES, ABSOLUTELY, YOUR HONOR.

9 THE COURT: ALL RIGHT. AND I'M NOT SURE --

10 MR. MAO: SORRY, YOUR HONOR.

11 THE COURT: EXCUSE ME.

12 I HAVE TO GIVE SOME THOUGHT TO -- I'M NOT SURE ALL THOSE  
13 ISSUES ARE BEFORE ME. SOME OF THOSE MAY BE MORE APPROPRIATE TO  
14 RAISE IN THE CLASS CERT PROCESS.

15 BUT I'M VERY FOCUSED ON PRESERVING AND WHAT ARE THE  
16 DETERIMENTS TO PLAINTIFFS, WHAT ARE THE DETERIMENTS TO  
17 PLAINTIFFS' CLAIMS, LIABILITY OR DAMAGES, OR IF NOT IN THE  
18 CLASS FORMATION ITSELF, BY SAMPLING AS OPPOSED TO SOME SORT OF  
19 WHOLESALE PRESERVATION, WHICH JUST STRIKES ME AS IT -- I WILL  
20 SAY, AS IT ALWAYS HAS IN THIS CASE, IT JUST STRIKES ME AS  
21 UNWORKABLE BECAUSE WE'RE TALKING ABOUT SUCH PHENOMENAL MASSES  
22 OF DATA, I DON'T EVEN SEE HOW IT CAN BE USED.

23 BUT THAT MAY BE A BIT ESOTERIC, BUT I HAVE THAT SPECIFIC  
24 QUESTION, AND WE'RE GOING TO BE OUT OF, OUT OF TIME, AND I KNOW  
25 YOU HAD OTHER POINTS YOU WANTED TO ADDRESS.

1           BUT I REALLY THINK WE NEED TO FOCUS ON HOW THIS TIES TO  
2           THE PRESERVATION PLAN.

3           MR. MAO: SO, YOUR HONOR, WE HAD VERY -- WE HAD  
4           PRESENTED AT LEAST TWO OTHER EXAMPLES THAT WERE VERY SPECIFIC  
5           THROUGHOUT THE CASE, WHICH IS ONE, THERE'S UMA DATA, WHICH IS  
6           TIED TO SPECIFIC BROWSERS, AND THAT TRACKS WHEN PEOPLE ARE  
7           ACTUALLY USING INCOGNITO.

8           IT GOES FROM --

9           THE COURT: I UNDERSTAND, MR. MAO. I UNDERSTAND -- I  
10          UNDERSTAND THE POINT THAT, FROM PLAINTIFFS' POSITION, YOU'RE  
11          SAYING WE CAN TIE DATA TO SPECIFIC USERS.

12          BUT WHAT I DON'T SEE IS -- SO THIS DATA, THIS DATA NEEDS  
13          TO BE PRESERVED, AND I KNOW YOU WANT TO -- YOU HAVE THIS IDEA  
14          OF A SUPER LOG, AND I'D LIKE TO SEE IF THE SPECIAL MASTER HAS  
15          SOME QUESTIONS AROUND THAT. I'VE SEEN THAT REFERENCED BEFORE.

16          AGAIN, JUST PULLING DATA OUT OF A LOG, IT SEEMS TO ME YOU  
17          WOULD LOSE VALUABLE CONTEXT, PERHAPS.

18          I QUESTION THE FEASIBILITY OF SUPER LOG CREATION, BUT I  
19          HAVE NOT READ THROUGH YOUR EXPERT DECLARATION IN THAT REGARD.

20          MS. BONN: AND I THINK WITH THAT, YOUR HONOR, AND  
21          BEING MINDFUL OF TIME, I WOULD LIKE TO TURN TO QUESTIONS 2 AND  
22          3, WHICH I THINK TIE INTO THIS QUESTION YOUR HONOR IS ASKING.

23          THE COURT: OKAY.

24          MS. BONN: AND ON QUESTION 2, WHICH REALLY IS NOT  
25          JUST THIS CLASS CERTIFICATION ISSUE, BUT LIABILITY AND DAMAGES,

1 I THINK THE CRITICAL POINT WHICH I MENTIONED IS THAT DURING  
2 DISCOVERY A YEAR AGO, WE DID WANT PRODUCTION OF SAMPLED DATA.  
3 THAT'S WHAT WE ASKED FOR IN P6 AND P16.

4 THE COURT: UM-HUM.

5 MS. BONN: GOOGLE OBJECTED AND THE COURT SUSTAINED  
6 GOOGLE'S OBJECTION.

7 THE COURT: UM-HUM.

8 MS. BONN: AND AS A RESULT OF THAT, YOU KNOW, WE HAD  
9 TO MAKE SOME DIFFERENT CHOICES. AND WE BELIEVE THAT OUR  
10 EXPERTS HAVE DEMONSTRATED THAT THROUGH COMMON EVIDENCE THAT  
11 PREDOMINATED, GOOGLE'S PRACTICES WERE CLASS-WIDE. IT CAN BE  
12 DEMONSTRATED WITH THE TEST DATA THAT WE HAVE, DOCUMENTS AND  
13 DEPOSITION TESTIMONY THAT WE HAVE OBTAINED.

14 BUT WE WERE FORECLOSED, WE WERE FORECLOSED FROM USING  
15 SAMPLED CLASS MEMBER DATA TO SUPPORT OUR LIABILITY AND DAMAGES  
16 CLAIMS.

17 AND WHAT WE THINK WOULD BE FUNDAMENTALLY UNFAIR IS, AFTER  
18 DISCOVERY IS CLOSED, FOR GOOGLE THEN TO BE ABLE, HAVING GONE  
19 THROUGH DISCOVERY WITHOUT ANY SUCH SAMPLE BEING TESTED BY  
20 PLAINTIFFS, ASKED ABOUT IN DEPOSITIONS, OR ADDRESSED IN OUR  
21 OPENING EXPERT REPORTS, FOR GOOGLE TO THEN COME IN AND BENEFIT  
22 BY SAYING, OH, WELL, NOW WE'RE GOING TO START PRESERVING THIS  
23 SAMPLE. OH, AND OUR EXPERTS ARE LOOKING AT OUR SAMPLE AND OUR  
24 EXPERTS THINK THAT WHAT THIS SAMPLE SHOWS IS THE DAMAGES MODEL,  
25 PLAINTIFFS, THAT YOU PUT IN BASED ON THE RECORD ADDUCED IN

1 DISCOVERY DOESN'T HOLD UP TO THE SAMPLED DATA THAT, ON A GOING  
2 FORWARD BASIS AFTER DISCOVERY, WE ARE NOW PRESERVING AND GIVING  
3 TO YOU.

4 THE COURT: OKAY. SO THAT'S A -- THAT'S A -- THAT'S  
5 A, YOU KNOW, EXCLUDE, DON'T ALLOW THIS EVIDENCE. IT'S EITHER  
6 AN OBJECTION AT THE CLASS CERT STAGE, OR IT MAY BE APPROPRIATE  
7 TO RAISE AT THIS STAGE. I HAVE TO GIVE THAT SOME CAREFUL  
8 THOUGHT.

9 BUT THAT'S -- I UNDERSTAND. THAT'S NOT A CRITICISM OF  
10 SAMPLING. IT'S A CONCERN ABOUT THE -- ABOUT HOW GOOGLE MIGHT  
11 USE IT GOING FORWARD.

12 MS. BONN: CORRECT.

13 AND I THINK THAT BRINGS US TO, WHAT'S THE ALTERNATIVE?

14 THE COURT: UH-HUH.

15 MS. BONN: THAT WAS REALLY QUESTION 3, HOW CAN THIS  
16 BE AMELIORATED AND WHAT'S THE ALTERNATIVE?

17 AND WHEN WE SAY WE'VE PROPOSED SORT OF A SUPER LOG  
18 PROPOSAL, I WANT TO BE CLEAR THAT THIS CONCEPT IS ACTUALLY ONE  
19 THAT GOOGLE PROPOSED.

20 AND, MR. FRAWLEY, IF YOU COULD JUST PULL UP THE SLIDE, I  
21 BELIEVE IT'S SLIDE 20.

22 BUT FOR THE VERY FIRST TIME, ON MARCH 15TH, WHICH WAS  
23 ALMOST TWO WEEKS AFTER THE CLOSE OF FACT DISCOVERY, GOOGLE FOR  
24 THE FIRST TIME SENT US AN EMAIL SAYING, "INSTEAD OF  
25 CATEGORICALLY PRESERVING A NUMBER OF DIFFERENT LOG SOURCES,

1 GOOGLE PROPOSES TO CONSTRUCT A LOG SOURCE FOR PRESERVATION THAT  
2 ONLY CONSISTS OF THE SPECIFIC FIELDS AND DATA TO BE PRESERVED."

3 SO THIS ISN'T A SUGGESTION THAT PLAINTIFFS AND THEIR  
4 EXPERTS SORT OF COOKED UP AND SAID, WE THINK GOOGLE COULD DO  
5 THIS. THE SUGGESTION WAS MADE BY GOOGLE ITSELF TO US.

6 AND, FRANKLY, IT CAME AS A BIT OF SURPRISE BECAUSE THE  
7 ENTIRE PRESERVATION DISCUSSION THAT HAD BEEN ONGOING IN FRONT  
8 OF YOUR HONOR SINCE LAST MARCH WAS THIS ALL-OR-NOTHING NOTION,  
9 THAT GOOGLE EITHER HAD TO SIMPLY PRESERVE ALL LOGS AS THEY  
10 PRESENTLY EXISTED IN THEIR EXISTING FORM, OR NOTHING, AND THERE  
11 WAS NO MIDDLE GROUND. AND FOR THE FIRST TIME WE GOT AN  
12 ADMISSION FROM GOOGLE THAT, IN FACT, IT COULD CREATE A SUPER  
13 LOG.

14 AND WHAT I WANT TO GO TO FROM THERE IS THE NEXT SLIDE,  
15 SLIDE 21, AND YOUR HONOR SAW THIS AT THE HEARING THE OTHER  
16 WEEK.

17 BUT WHAT THIS PROPOSAL FROM GOOGLE SHOWS AND WHAT  
18 MR. THOMPSON HAS PUT FORTH IN HIS DECLARATION IS GOOGLE CAN  
19 DEDUPE DOWN TO ONLY THE RELEVANT FIELDS ACROSS LOGS, COMBINE  
20 THEM, AND WE KNOW FROM THE INCOGNITO DETECTION BITS THAT THEY  
21 DON'T EVEN NEED TO PRESERVE ALL OF THE DATA BECAUSE INCOGNITO  
22 DATA IN PARTICULAR, WHICH IS APPROXIMATELY [REDACTED] OF CHROME  
23 TRAFFIC, WHICH IS ITSELF A SUBSET OF ALL BROWSER TRAFFIC, IS  
24 SPECIFICALLY FLAGGED WITH INCOGNITO DETECTION BITS.

25 AND SO WE PUT IN A DECLARATION FROM MR. THOMPSON SAYING

1 THAT HE BELIEVES THAT THE BURDEN IS SUBSTANTIALLY OR ALMOST  
2 ENTIRELY AMELIORATED BY THIS FUNNEL.

3 GOOGLE, IN RESPONSE -- WE THOUGHT, WELL, PERHAPS IF GOOGLE  
4 DISAGREES, THEY WILL PUT IN A DECLARATION SAYING MR. THOMPSON  
5 AND PLAINTIFFS ARE WILDLY OFF BASE, THIS ISN'T POSSIBLE, IT  
6 ISN'T FEASIBLE, THE BURDEN ASSOCIATED WITH INCOGNITO DATA WOULD  
7 BE HIGH.

8 BUT INSTEAD WHAT THEY DID IS THEY PUT IN A DECLARATION  
9 FROM MR. HARTING -- AND MR. HARTING, BY THE WAY, IS ANOTHER  
10 UNDISCLOSED WITNESS, HE WAS NOT IN THE LIST OF 226.

11 WHEN WE GO TO SLIDE 24, MR. FRAWLEY, HE ALSO FLAGS -- AND  
12 THIS IS THE BULK OF HIS DECLARATION. HE SAYS THAT TO PRESERVE  
13 IN THEIR ENTIRETY A CERTAIN SET OF LOGS WOULD BE UNDULY  
14 BURDENSOME.

15 WHAT HE NEVER SAYS ANYWHERE IN HIS DECLARATION IS THAT  
16 PRESERVING A SUBSET OF DATA FROM THOSE LOGS THAT IS LIMITED BY  
17 FIELD, DEDUPED, AND TARGETED TO THE INCOGNITO DATA AND DATA  
18 THAT CAN BE LINKED TO IT, HE NEVER SAYS THAT THAT WOULD BE  
19 BURDENSOME.

20 HE SIMPLY SAYS THAT PRESERVING ALL OF THESE LOGS IN THEIR  
21 ENTIRELY WOULD BE. HE'S ANSWERING A FUNDAMENTALLY DIFFERENT  
22 QUESTION THAN THE SUPER LOG QUESTION.

23 AND BY THE WAY, HE ALSO DOES MENTION IN HIS DECLARATION  
24 THAT A NUMBER OF THESE LOGS, WHICH WERE NOT DISCLOSED BY GOOGLE  
25 IN THE NOVEMBER 18TH DECLARATION, WERE AD MANAGER LOGS, AND I

1 DO RECALL AT THE HEARING GOOGLE SAYING THAT THE REASON THESE  
2 WEREN'T DISCLOSED IS THAT GOOGLE HAD BEEN FOCUSSSED ON AD  
3 MANAGER. IT APPEARS THAT, IN FACT, THESE LOGS ARE THEMSELVES  
4 AD MANAGER LOGS.

5 AND IF -- MR. FRAWLEY, THIS IS MY LAST SLIDE. IF YOU  
6 COULD JUST TURN TO SLIDE 27.

7 THIS IS REALLY WHAT WE WOULD ASK YOUR HONOR TO CONSIDER.

8 MR. THOMPSON'S DECLARATION AND THE KEY POINTS ARE ON THE  
9 LEFT, AND HE LAYS OUT WHAT HE THINKS CAN BE DONE THROUGH A  
10 SUPER LOG APPROACH AND THAT HE THINKS IT WOULD LIMIT THE  
11 PRESERVATION BURDEN, IT WOULD ELIMINATE THE BURDEN BY [REDACTED]  
12 PERCENT.

13 GOOGLE'S DECLARANT DOES NOT ADDRESS THAT, DOES NOT REFUTE  
14 THAT POINT, SAYS NOTHING ABOUT IT.

15 AND SO I THINK YOU CAN TAKE THE SLIDES DOWN, MR. FRAWLEY.

16 BUT FUNDAMENTALLY, OUR POINT IS THERE IS NO FACTUAL RECORD  
17 THAT PRESERVING A SUBSET OF THE DATA, DEDUPED, LIMITED TO  
18 RELEVANT FIELDS, TIED TO INCOGNITO OR DATA THAT COULD BE LINKED  
19 TO INCOGNITO WITH I.P. AND USER AGENT, WOULD BE BURDENSOME.

20 AND WE THINK THAT THE ONLY WAY THAT IT WOULD MAKE SENSE TO  
21 PIVOT FROM PRESERVATION TO SAMPLING IS IF THERE WAS SOME  
22 DEMONSTRATION BY GOOGLE THAT THE BURDEN ASSOCIATED WITH THE  
23 SUPER LOG APPROACH, WHICH GOOGLE ITSELF PROPOSED, IS UNDULY  
24 BURDENSOME SUCH THAT SAMPLING WOULD BE SOME SORT OF SUBSTITUTE.

25 AND WE SIMPLY THINK THAT THE RECORD EVIDENCE DOES NOT

1 SUPPORT ANY SUCH ARGUMENT BY GOOGLE. TO THE CONTRARY. THE  
2 UNREBUTTED RECORD EVIDENCE IS THAT GOOGLE IS CAPABLE OF MAKING  
3 SUCH A SUPER LOG, AND THEY HAD NOTHING TO SAY IN RESPONSE TO  
4 MR. THOMPSON'S DECLARATION THAT IF THEY DID THAT, THE BURDEN  
5 ASSOCIATED WITH STORAGE IS SUBSTANTIALLY LESS.

6 SO THOSE ARE OUR KEY POINTS.

7 THE COURT: THANK YOU, MS. BONN.

8 MS. BONN: IN THE INTERESTS OF TIME, I'LL PASS IT  
9 OVER. THANK YOU.

10 THE COURT: THANK YOU.

11 BEFORE I FORGET, TO THE EXTENT ANY PARTY USES SLIDES  
12 TODAY, AT THE CONCLUSION OF THE HEARING, I WILL HAVE YOU EMAIL  
13 ONLY THE SLIDES YOU HAVE USED, ONLY THE SLIDES YOU HAVE USED,  
14 TO MS. FANTHORPE, AND PLEASE MAKE IT CLEAR IF THIS WAS BROWN  
15 PLAINTIFFS, OR IF IT'S GOOGLE, IF IT WAS IN THE BROWN CASE OR  
16 CALHOUN CASE. ALL RIGHT?

17 THANK YOU VERY MUCH. I APPRECIATE IT, AND I APPRECIATE  
18 THE DISCIPLINE OF FOCUSsing ON THE ORGANIZING OF THE COMMENTS  
19 AND QUESTIONS ALONG THE LINES THAT I LAID OUT. THAT HAS BEEN  
20 VERY HELPFUL.

21 LET ME HEAR FROM GOOGLE.

22 WHO WILL LEAD US OFF? MS. TREBICKA?

23 MS. TREBICKA: YES, YOUR HONOR. GOOD AFTERNOON.  
24 THANK YOU.

25 I WILL START US OFF, AND MY COLLEAGUES, MR. ANSORGE,

1 DR. ANSORGE, AND MS. GAO WILL LIKEWISE ADDRESS CERTAIN ISSUES.

2 BUT I WILL TRY TO AT LEAST LAY THE GROUNDWORK SO THAT THEY  
3 CAN JUMP IN WITH ANYTHING THAT I MAY HAVE MISSED, BECAUSE AS  
4 THE PARTY THAT COMES SECOND, WE'RE TRYING TO MAKE OUR  
5 PRESENTATION AND OUR REMARKS AS RESPONSIVE AS POSSIBLE TO  
6 PLAINTIFFS SO THAT YOUR HONOR CAN SEE WE'RE JOINING ISSUES.

7 THERE ARE TWO DISTINCT PARTS TO PLAINTIFFS' PRESENTATION,  
8 AND THEY SEEM TO BE A LITTLE BIT AT ODDS WITH EACH OTHER.

9 FIRST, THEY'VE NOW ASKED FOR EVIDENTIARY SANCTIONS. WE'RE  
10 HERE TO DISCUSS PRESERVATION, AND THAT INITIAL PRESENTATION  
11 WHERE PLAINTIFFS ASKED FOR EVIDENTIARY SANCTIONS IS A GOOD  
12 ILLUSTRATION FOR WHY WE'VE BEEN UNABLE TO MEET IN THE MIDDLE  
13 WHEN DISCUSSING A PRESERVATION PLAN. WE'RE A LITTLE BIT LIKE  
14 SHIPS PASSING IN THE NIGHT. WHEN WE THINK WE SHOULD BE  
15 DISCUSSES SOLUTIONS TO THE PRESERVATION QUESTION, THERE'S ALL  
16 OF A SUDDEN A DISCUSSION OF SANCTIONS THAT IS WEDGED IN.

17 RESPECTFULLY, THIS IS NOT A HEARING ON WHETHER PLAINTIFFS  
18 SHOULD GET ADVERSE INFERENCES OR ISSUE PRECLUSION. THAT WAS --  
19 THAT'S SOMETHING THAT WAS ALREADY DISCUSSED. WE THINK IT'S  
20 UNMERITORIOUS. BUT THIS IS NOT THE CONTEXT NOW.

21 AND IF YOUR HONOR IS LEANING IN THAT DIRECTION, THEN WE'D  
22 REQUEST ADDITIONAL BRIEFING AND HEARING TIME.

23 AS AN ASIDE, RULE 23 REQUIRES PLAINTIFFS TO SHOW THAT A  
24 CLASS ACTION IS MANAGEABLE AND, AND I QUOTE, "THAT A CLASS  
25 ACTION IS SUPERIOR TO OTHER AVAILABLE METHODS FOR FAIRLY AND

1 EFFICIENTLY ADJUDICATING THE CONTROVERSY."

2 SO WHAT BRISENO SAID IS NOT AT ISSUE HERE, BUT WE WILL BE  
3 ARGUING IT AT THE CLASS CERTIFICATION STAGE.

4 NOW, TO THE SECOND ISSUE WHICH, AS I SAID, IT SEEMS TO BE  
5 A LITTLE BIT AT ODDS, BUT IT'S THIS ISSUE OF WHAT PLAINTIFFS  
6 ACTUALLY ARE SEEKING TO -- WHAT PLAINTIFFS ARE SEEKING TO BE  
7 PRESERVED.

8 AND [REDACTED] OF ALL CHROME DATA IS STILL AN INSANE AMOUNT  
9 OF DATA. AND THAT'S WHAT WE'VE BEEN TRYING TO, OR ATTEMPTING  
10 TO SHOW THROUGH THE HARTING DECLARATION.

11 PLAINTIFFS MENTIONED THAT GOOGLE DOES NOT ADDRESS IN THE  
12 HARTING DECLARATION THIS IDEA OF A MORE LIMITED PRESERVATION --

13 THE COURT: LET ME JUST ASK A QUESTION THERE,  
14 MS. TREBICKA.

15 MS. TREBICKA: OF COURSE.

16 THE COURT: BECAUSE I THOUGHT MS. BONN'S POINT AND  
17 THAT THE SLIDE -- I THOUGHT, EXCUSE ME, THAT THE [REDACTED] WAS  
18 A REFLECTION OF INCOGNITO DATA, NOT CHROME -- NOT CHROME AT  
19 LARGE, BUT INCOGNITO SPECIFICALLY. WAS I --

20 MS. TREBICKA: CORRECT. SO I THINK WHAT PLAINTIFFS  
21 WERE ATTEMPTING TO SAY IN THAT SLIDE IS THAT ONLY [REDACTED] OF  
22 THE OVERALL CHROME DATA IS INCOGNITO DATA AND, THEREFORE, IT  
23 SHOULD NOT BE BURDENsome TO BE PRESERVED.

24 THE COURT: I SEE.

25 MS. TREBICKA: AND OUR POINT IS EVEN THAT IS AN

1 EXTREMELY LARGE, CRUSHING AMOUNT OF DATA RIGHT NOW, AND TO  
2 PRESERVE IT FOR THE DURATION OF THE LAWSUIT IS JUST NOT DOABLE.

3 BUT, YOUR HONOR, WE DON'T SEE -- AND WE'LL ADDRESS THIS IN  
4 MORE DETAIL, BUT WE DON'T SEE A REASON TO DEVIATE FROM THE  
5 SPECIAL MASTER'S WELL THOUGHT OUT SAMPLE, SAMPLED PRESERVATION  
6 RECOMMENDATION. WE BELIEVE THAT IS THE BASIS OF A WELL THOUGHT  
7 OUT PRESERVATION PLAN, AND THAT PLAINTIFFS JUST ADMITTED THAT  
8 THEY DON'T NEED THE DATA TO -- FOR CLASS CERT PURPOSES, FOR  
9 CONFIRMING CLASS MEMBERSHIP OR OTHERWISE. FINE.

10 OUR ARGUMENT IS THAT WE ACTUALLY DON'T NEED IT, EITHER.  
11 WE DON'T NEED THIS DATA TO MAKE THE POINTS THAT WE NEED TO MAKE  
12 IN REBUTTAL OF THEIR CLASS CERTIFICATION CLAIMS.

13 YOUR HONOR, THERE'S TWO ADDITIONAL POINTS THAT I'D LIKE TO  
14 ADDRESS IN THIS -- IN THE PRESERVATION CONTEXT, NOW MOVING AWAY  
15 FROM THE EVIDENTIARY SANCTIONS.

16 THE FIRST IS THAT WHAT AMOUNTS TO A LARGE, WHOLESALE  
17 PRESERVATION OF THESE CHROME -- OF [REDACTED] OF ALL CHROME LOGS  
18 IS UNWORKABLE. THE PLAINTIFFS ARE ASKING FOR THIS TO BE  
19 PRESERVED SO THAT THEY CAN -- SO THAT THEY CAN IDENTIFY CLASS  
20 MEMBERS.

21 AND, YOUR HONOR, PLAINTIFFS HAVE ATTEMPTED TO SHOW THAT  
22 THROUGH THE I.P. ADDRESS PLUS USER AGENT COMBINATION, HOW THAT  
23 WILL WORK, HOW THAT WILL IDENTIFY CLASS MEMBERS. IT DOESN'T  
24 WORK.

25 AND YOUR HONOR MADE THAT REMARK HERSELF, SO I'M NOT GOING

1 TO DWELL ON IT VERY MUCH, BUT THAT'S WHAT MR. THOMPSON ALSO  
2 ADMITTED AT THE CLASS CERTIFICATION HEARING.

3 THE COURT: YOU MEAN AT THE OSC HEARING?

4 MS. TREBICKA: I'M SORRY, AT THE OSC HEARING.

5 YOU KNOW, MR. THOMPSON ADMITTED THAT THE I.P. ADDRESS IS  
6 GENERALLY -- DOES GENERALLY NOT IDENTIFY A DEVICE. IT  
7 CERTAINLY CANNOT IDENTIFY A FLESH AND BLOOD PERSON.

8 AND EVEN IF THE COMBINATION OF AN I.P. ADDRESS AND A USER  
9 AGENT MAY BE ABLE TO IDENTIFY A DEVICE AT A VERY PARTICULAR  
10 POINT IN TIME, BUT IT CAN CERTAINLY NOT IDENTIFY A FLESH AND  
11 BLOOD PERSON, ESPECIALLY NOT IN THE PARADIGMATIC USE CASE OF  
12 INCOGNITO, OF CHROME -- OR OF ANY PRIVATE BROWSING MODE, WHICH  
13 IS TWO PEOPLE SHARING A DEVICE AND WANTING THEIR BROWSING TO  
14 REMAIN PRIVATE.

15 IT IS IMPOSSIBLE TO KNOW, JUST LOOKING AT THIS DATA,  
16 WHETHER IT'S PERSON A OR PERSON B WHO HAS BROWSED PRIVATELY ON  
17 THAT DEVICE ON THE BASIS OF THE USER AGENT AND I.P. ADDRESS  
18 ALONE.

19 THE COURT: IS THAT SAME ARGUMENT YOUR RESPONSE TO I  
20 THINK IT WAS -- I CAN'T REMEMBER, PARDON ME, IF IT WAS MS. BONN  
21 OR MR. MAO WHO REFERRED TO THEIR EXPERT REPORT, TO THE HOCHMAN  
22 REPORT.

23 MS. TREBICKA: CORRECT. THE HOCHMAN REPORT, YOUR  
24 HONOR, THE BASIC -- THE BASIC STRUCTURE OF THE REPORT IS  
25 EXACTLY PRECISELY WHAT MR. THOMPSON DESCRIBED.

1 AND IT'S A VERY LONG REPORT. IT'S 31 OPINIONS, 350  
2 PARAGRAPHS, BUT IT BOILS DOWN TO USING USER AGENT AND I.P.  
3 ADDRESS TO IDENTIFY PEOPLE, AND THAT IS JUST NOT POSSIBLE. IT  
4 IS THE SAME EXACT TYPE OF ARGUMENTS THAT YOU HEARD FROM  
5 MR. THOMPSON, YOUR HONOR.

6 AND IT DOESN'T WORK, YOUR HONOR, AND I'D LIKE TO ALSO MAKE  
7 A VERY, VERY SIMPLE ILLUSTRATION AS TO WHY IT DOESN'T WORK.

8 PLAINTIFFS, IN THEIR RESPONSE TO GOOGLE'S OBJECTIONS, ON  
9 PAGE 2 IN RESPONSE TO GOOGLE'S OBJECTIONS, BRING AN EXAMPLE HOW  
10 THEY PLAN TO USE THIS DATA. THIS IS THE SECOND FULL PARAGRAPH.

11 THE CLASS MEMBER SIGNED IN FOUR YEARS AGO, THEN SIGNED  
12 OUT, BROWSED IN INCOGNITO FOR 30 MINUTES THAT AFTERNOON, AND  
13 THEN PLAINTIFFS PURPORT TO TRACK THE USER ACROSS SIGNED IN AND  
14 SIGNED OUT LOGS BY THE I.P. ADDRESS AND THE USER AGENT FROM  
15 FOUR YEARS AGO.

16 THAT WILL NOT WORK FOR THE SIMPLE REASON THAT I.P.  
17 ADDRESSES ARE PARTIALLY REDACTED WITHIN [REDACTED] OF  
18 COLLECTION.

19 FURTHER, DIFFERENT LOGS -- BECAUSE NOW WE'RE TALKING ABOUT  
20 TRACKING A USER ACROSS LOGS -- USE DIFFERENT LOGICS REGARDING  
21 WHICH TYPE OF I.P. ADDRESS EACH LOG STORES. THIS VERY SIMPLE  
22 ILLUSTRATION SHOWS THAT WHAT PLAINTIFFS WANT TO USE THE DATA  
23 FOR SIMPLY WILL NOT WORK.

24 AND WHY IS THIS IMPORTANT? IT'S IMPORTANT BECAUSE --  
25 THE COURT: MS. TREBICKA, TELL ME AGAIN WHICH

1 DOCUMENT YOU'RE LOOKING AT.

2 MS. TREBICKA: YOUR HONOR, I WISH I HAD THE DOCKET  
3 NUMBER.

4 THE COURT: I WISH YOU DID, TOO.

5 MS. TREBICKA: I KNOW, I APOLOGIZE, BECAUSE I HAVE  
6 THE UNREDACTED VERSION.

7 THE COURT: AS DO I.

8 MS. TREBICKA: IT IS PLAINTIFFS' RESPONSE TO GOOGLE'S  
9 OBJECTION FILED ON THE 25TH OF APRIL.

10 THE COURT: OKAY. I'M THERE. AND WHICH PAGE ARE YOU  
11 ON?

12 MS. TREBICKA: I'M ON PAGE 2.

13 THE COURT: AND FOR YOUR RECORD, IT'S 560, DOCKET  
14 560-2.

15 MS. TREBICKA: THANK YOU, YOUR HONOR.

16 THE COURT: AND THERE'S THE EXAMPLE, YES, THAT YOU  
17 WERE WALKING US THROUGH. YES, OKAY.

18 MS. TREBICKA: CORRECT, YOUR HONOR.

19 AND THE LARGER POINT STILL STANDS. THE BROADER CONTEXT IS  
20 THAT PLAINTIFFS HAVE HAD ALMOST TEN MONTHS TO TEST THEORIES OF  
21 IDENTIFIABILITY, CLASS MEMBERS, JOINABILITY OF DATA THROUGH THE  
22 SPECIAL MASTER PROCESS.

23 AND GOOGLE HAS PROVIDED GIGABYTES OF DATA FROM PLAINTIFFS,  
24 AS WELL AS THEIR EXPERTS' TEST ACCOUNTS, AND THEY STILL HAVEN'T  
25 BEEN ABLE TO COME UP WITH ANYTHING OTHER THAN WHAT I JUST

1 DESCRIBED.

2 AT THIS STAGE OF THE LITIGATION, GIVEN ALL THE INFORMATION  
3 THAT THEY HAVE RECEIVED, THERE NEEDS TO BE A DIFFERENT SHOWING.  
4 IT CANNOT BE THE CASE THAT PLAINTIFFS CAN COME UP WITH ANY  
5 RANDOM THEORY, INCLUDING ONE THAT HAS ALREADY BEEN REJECTED,  
6 AND ON THAT BASIS BE ALLOWED TO IMPOSE THIS TREMENDOUS BURDEN  
7 ON THE OTHER PARTY.

8 AND, YOUR HONOR, I'D ALSO LIKE TO POINT OUT THAT THESE  
9 TWO -- THERE'S TWO BUILDING BLOCKS TO PLAINTIFFS' THEORY. THIS  
10 I.P. ADDRESS PLUS USER AGENT CAN UNIQUELY IDENTIFY SOMEONE; AND  
11 THEN THE MAYBE\_CHROME\_INCOGNITO BIT; OR THE ABSENCE OF THE  
12 X-CLIENT DATA HEADER, THAT SAME LOGIC, CAN BE USED TO RELIABLY  
13 IDENTIFY CHROME INCOGNITO BROWSING SESSIONS, AND THAT IS WHAT  
14 LEADS TO THE [REDACTED] OF CHROME TRAFFIC THAT I WANTED TO  
15 ADDRESS.

16 BUT BOTH BUILDING BLOCKS ARE SPECULATIVE. THEY DO NOT  
17 WORK.

18 FIRST, WE'VE BEEN TALKING ABOUT THE RELIABILITY OF THE  
19 ABSENCE OF THE X-CLIENT DATA HEADER FOR A LONG TIME. THERE'S  
20 BEEN EXTENSIVE BRIEFING, ON THE BASIS OF WHICH THE SPECIAL  
21 MASTER ALREADY DECLINED A WHOLESALE PRODUCTION OF THE DATA  
22 WHERE THE X-CLIENT DATA HEADER WAS MISSING.

23 FOR THE SAME REASON, IT IS TOO UNRELIABLE TO NOW BASE A  
24 WHOLESALE PRESERVATION OF THAT KIND OF DATA, OF THE DATA WHERE  
25 THE MAYBE\_CHROME\_INCOGNITO BIT IS SET TO TRUE OR WHERE THE

1 X-CLIENT DATA HEADER IS MISSING.

2 AND, YOUR HONOR, I'D LIKE TO POINT YOU TO PARAGRAPH 6 OF  
3 THE HARTING DECLARATION WHICH WE FILED WITH OUR RESPONSE, SO ON  
4 APRIL 25TH, WHICH DOES SUBSTANTIATE THE BURDEN OF FOCUSING  
5 ONLY ON THESE, ON THESE BITS OR -- THAT PLAINTIFFS ARE NOW, ARE  
6 NOW IDENTIFYING.

7 FOR THE PAST MONTH, THE LOGS LISTED BELOW --

8 THE COURT: WHICH PARAGRAPH ARE YOU IN, MS. TREBICKA?

9 MS. TREBICKA: PARAGRAPH 6, YOUR HONOR.

10 THE COURT: UH-HUH. GO AHEAD.

11 MS. TREBICKA: THE LOGS LISTED BELOW, WHICH IS ONLY  
12 THE LOGS THAT RECORD THE MAYBE\_CHROME\_INCOGNITO BIT, CAPTURED  
13 AT LEAST [REDACTED] ENTRIES WITH THE MAYBE\_CHROME\_INCOGNITO  
14 FIELD SET TO TRUE, EACH DAY. SO THIS IS JUST FOR ONE DAY.

15 AND, YOUR HONOR, AGAIN, THESE SAME ARGUMENTS THAT WE'RE  
16 MAKING NOW, THAT THE PLAINTIFFS ARE MAKING AND THAT WE ARE  
17 REBUTTING ABOUT THE IDENTIFIABILITY OF USERS AND WHY A LARGER  
18 SET OF DATA PLAINTIFFS CLAIM SHOULD BE PRESERVED AND IN OUR  
19 VIEW SHOULD NOT BE AND THE REASONS FOR WHY IT SHOULD NOT BE  
20 HAVE ALREADY BEEN MADE OVER MANY MONTHS OF THE SPECIAL MASTER  
21 PROCESS.

22 AND THE SPECIAL MASTER HAS ALREADY HEARD ALL OF THIS  
23 EVIDENCE AND HAS COME TO THE CONCLUSION THAT THIS METHOD OF  
24 IDENTIFYING USERS IS TOO SPECULATIVE TO ACTUALLY IDENTIFY ANY  
25 PUTATIVE CLASS MEMBERS AND, THEREFORE, IT CANNOT SERVE AS THE

1 BASIS OF A PRESERVATION PLAN THAT WOULD PUT SUCH A TREMENDOUS  
2 AMOUNT OF BURDEN ON GOOGLE.

3 AND I WOULD LIKE TO REST ON THE BURDEN A LITTLE BIT, YOUR  
4 HONOR, BECAUSE I FEAR THAT IT MAY HAVE GOTTEN LOST A LITTLE  
5 BIT.

6 BUT THERE WERE TWO TYPES OF VERY DISTINCT BURDENS ON  
7 GOOGLE. THE FIRST IS THAT LITERALLY EVERYTHING THAT PLAINTIFFS  
8 SAY THEY PLAN TO DO WITH THIS DATA IF THEY HAVE IT AMOUNTS TO A  
9 VIOLATION OF DOZENS OF GOOGLE POLICIES THAT ARE IN PLACE TO  
10 PROTECT THE PRIVACY OF INTERNET USERS.

11 AND I'M TALKING ABOUT VERY REAL POLICIES THAT GOOGLE  
12 EXPLAINS PUBLICLY AND IS COMMITTED TO, AND ALSO STRICTLY  
13 ADHERES TO PRIVATELY.

14 AND TO MAKE IT SOUND LESS ABSTRACT, DELETION OF PERSONAL  
15 DATA AFTER [REDACTED] AT THE LATEST, OR PARTIALLY REDACTING AN  
16 I.P. ADDRESS WITHIN [REDACTED] OF COLLECTION, OR KEEPING  
17 UNAUTHENTICATED DATA SEPARATE FROM AUTHENTICATED DATA.

18 PLAINTIFFS FIRST ACCUSED US OF FINGERPRINTING EN MASS, AND  
19 NOW ARE THEMSELVES PLANING TO FINGERPRINT EN MASS AFTER THE  
20 RECORD HAS SHOWN THAT GOOGLE DOESN'T DO IT.

21 FINGERPRINTING IS A TECHNIQUE THAT GOOGLE DOES NOT DO AND  
22 HAS, IN FACT, PUBLICLY COME OUT AGAINST, THAT IT TENDS TO  
23 IDENTIFY A DEVICE OR A USER WHEN THEY DON'T WANT TO BE  
24 IDENTIFIED. IT'S A PRIVACY VIOLATION. SO THAT'S THE FIRST  
25 HARM AND BURDEN.

1 THE SECOND BURDEN IS JUST A BURDEN OF FINANCIAL, MONETARY  
2 BURDEN, AND ENGINEERING BURDEN.

3 YOUR HONOR, WE HAVE THE HARTING DECLARATION TO  
4 SUBSTANTIATE THAT BURDEN, AND IT FOCUSES ON THE [REDACTED] LOGS,  
5 AS WELL AS THE, THE AMOUNT OF SPACE THAT IT WOULD TAKE TO  
6 PRESERVE JUST THE MAYBE\_CHROME\_INCOGNITO FIELD.

7 SO FROM THAT PERSPECTIVE, WE ARE ADDRESSING THE MAIN  
8 CONCERN THAT PLAINTIFFS ARE BRINGING NOW.

9 HOWEVER, WE ALSO HAVE BURDEN INFORMATION FOR YOUR HONOR ON  
10 BOTH THE [REDACTED] AND THE [REDACTED] PLATFORMS, AND ARE DIRECTED -- WE'RE  
11 HAPPY TO EITHER FILE ADDITIONAL DECLARATIONS OR PROVIDE YOU  
12 WITH THAT INFORMATION ORALLY IF YOUR HONOR WOULD LIKE TO HEAR.

13 THE COURT: YEAH, LET'S ADDRESS -- LET'S ADDRESS  
14 THAT.

15 MS. TREBICKA: OKAY. THANK YOU, YOUR HONOR.

16 AND WITH THAT, I WOULD LIKE TO TURN IT OVER TO MY  
17 COLLEAGUE, TRACY GAO, WHO IS PREPARED, AND I'M HOPING THAT  
18 SHE'S PULLING ALL THE INFORMATION UP RIGHT NOW, SHE WILL BE  
19 ADDRESSING THE BURDEN ASSOCIATED WITH THE [REDACTED] AND THE [REDACTED]  
20 DATABASE.

21 THE COURT: OKAY. AND I JUST, AGAIN, TO KEEP AN EYE  
22 ON TIME ALLOTMENT, I DO WANT TO HEAR GOOGLE'S RESPONSE WITH  
23 REGARDS TO THE SUPER LOG DISCUSSION THAT MS. BONN AND MR. MAO  
24 REPORT.

25 MS. TREBICKA: SURE, YOUR HONOR. SO, YES, IT IS

1 CORRECT THAT GOOGLE, IN THE EARLY STAGES OF THE PRESERVATION  
2 DISCUSSION, OFFERING TO OBTAIN OR TO REMOVE CERTAIN FIELDS,  
3 IDENTIFY FIELDS, AND PRESERVE THEM IN A SEPARATE LOG SOMEWHERE.

4 THE SUPER LOG IDEA IS VERY GENERIC, SO TO BE ABLE TO  
5 REALLY ASSESS THE BURDEN ASSOCIATED WITH IT, WE'D NEED TO KNOW  
6 WHAT IT WOULD ENTAIL.

7 IF IT IS SOMETHING LIKE A SAMPLED PRESERVATION OF SPECIFIC  
8 FIELDS, FOR EXAMPLE, 10,000 A DAY -- WHICH, AGAIN, IS A MASSIVE  
9 AMOUNT OF DATA, BUT WE'RE HAPPY TO DO, OR WE'RE WILLING TO DO  
10 TO RESOLVE THIS DISPUTE -- THEN THAT IS CERTAINLY DOABLE.

11 BUT WE'D NEED TO KNOW THE DETAILS OF WHAT IT WOULD ENTAIL.  
12 WE ARE NOT OPPOSED TO THE IDEA OF A SUPER LOG, AS LONG AS THE  
13 BASIS OF THE SUPER LOG IS SAMPLING.

14 THE COURT: OKAY. SOUNDS LIKE BOTH SIDES ARE IN  
15 AGREEMENT THAT THEY WOULD NEED -- MORE DIALOGUE WOULD BE  
16 NEEDED.

17 MS. TREBICKA: YOUR HONOR, I'D ALSO LIKE -- SO FOR  
18 THE SUPER LOG, AGAIN, JUST SO THAT THE RECORD IS CLEAR, WE  
19 WOULD NOT WANT TO LINK OR STORE TOGETHER DIFFERENT TYPES OF  
20 DATA THAT SHOULD NOT BE STORED TOGETHER.

21 SO THERE ARE CERTAIN DETAILS FOR THE SUPER LOG THAT -- AS  
22 I SAID, THE DEVIL IS IN THE DETAILS -- THAT WE'D LIKE TO  
23 ADDRESS.

24 AND ON THAT PARTICULAR POINT, WHICH IS VERY SPECIFIC, VERY  
25 TECHNICAL, I WOULD LIKE TO LEAN ON THE EXPERTISE OF MY

1 COLLEAGUE, DR. ANSORGE, AND I ASK THAT BOTH MS. GAO AND  
2 DR. ANSORGE BE ALLOWED TO SPEAK TO ADDRESS THESE TWO SPECIFIC  
3 ISSUES.

4 SO THE BURDEN --

5 THE COURT: YEAH, I THINK I GET IT ON SUPER LOG. YOU  
6 KNOW, MAYBE, MAYBE OPPOSE, MAYBE NOT. THE BASIS WOULD HAVE TO  
7 BE SAMPLING AND DEVIL IN THE DETAILS. I GOT IT.

8 LET ME HEAR FROM MS. GAO, PLEASE, ON THE [REDACTED] AND [REDACTED]  
9 POINT THAT YOU WANTED TO HIGHLIGHT.

10 MS. GAO: SURE, YOUR HONOR.

11 THERE'S A SPECIAL BURDEN ASSOCIATED WITH PRESERVING DATA  
12 IN [REDACTED] AND [REDACTED]. FOR EXAMPLE, AS OF YESTERDAY, THE TOTAL DATA  
13 SAVED IN [REDACTED] IS OVER [REDACTED], AND JUST THE, THE 30 DAY  
14 AVERAGE OF THE PAST 30 DAYS DAILY DATA THAT IS WRITTEN TO  
15 [REDACTED] IS OVER [REDACTED], WHICH AMOUNTS TO [REDACTED]  
16 [REDACTED].

17 ALSO, WHICH EQUALS, LIKE, [REDACTED] EMAILS, ASSUMING THE  
18 AVERAGE EMAIL SIZE IS [REDACTED]. AND THAT IS A LARGE AMOUNT OF  
19 DATA.

20 AND ALSO SIMILARLY IN [REDACTED], THE DAILY AVERAGE, BASED ON THE  
21 LAST 30 DAYS, ON EACH DAY THE DATA WRITTEN TO THE [REDACTED] DATABASE  
22 IS [REDACTED].

23 SO IT'S NOT LIKE -- IT'S NOT LIKE ONE -- IT'S NOT LIKE A  
24 SIMPLE DATA THAT -- IF IT'S NOT SIMPLE DATA THAT WE'RE TALKING  
25 ABOUT, THIS IS REALLY A SUBSTANTIAL BURDEN THAT WE'RE LOOKING

1 AT.

2 THE COURT: THANK YOU. THANK YOU, MS. GAO.

3 ALL RIGHT. MS. TREBICKA, WAS THERE OTHER SPECIFIC  
4 RESPONSES TO PLAINTIFFS' POINT, OR CAN WE MOVE ON?

5 MS. TREBICKA: YOUR HONOR, I BELIEVE THAT I'VE  
6 ADDRESSED EVERYTHING THAT WE WANTED TO ADDRESS, BUT I AM GIVING  
7 MY COLLEAGUES A CHANCE TO JUMP IN TO THE EXTENT I'VE MISSED  
8 SOMETHING IN THE HEAT OF THE DISCUSSION.

9 YOUR HONOR, THERE ARE OTHER ISSUES THAT PLAINTIFFS HAVE  
10 RAISED AS OBJECTIONS TO THE SPECIAL MASTER'S REPORT AND  
11 RECOMMENDATION THAT WE WOULD LIKE A CHANCE TO ADDRESS IF  
12 NECESSARY, BUT SINCE THEY'RE NOT BEING ARGUED BY PLAINTIFFS, WE  
13 ASSUME THAT THAT IS NOT NECESSARY AT THIS POINT.

14 THE COURT: YES, WE'VE MOVED AWAY FROM A NUMBER OF  
15 THE OBJECTIONS AND CONCERN OR COUNTERPROPOSALS THAT WERE SET  
16 FORTH IN THE PAPERS. BUT I THINK THAT THIS HAS BEEN VERY  
17 INSTRUCTIVE. IT'S HELPFUL TO KNOW REALLY WHAT THE PARTIES'  
18 OBJECTIVES ARE, CONCERN AND OBJECTIVES, AND I THINK THAT THOSE  
19 HAVE BEEN WELL ARTICULATED.

20 LET ME JUST CIRCLE BACK TO MS. BONN, AND LET ME ASK IF  
21 THERE'S ANYTHING SPECIFIC, SPECIFIC IN WHAT MS. TREBICKA SAID  
22 THAT YOU WOULD LIKE A MOMENT TO RESPOND TO, BECAUSE THEN I'M  
23 GOING TO TAKE A -- WELL, I'LL TURN TO THE SPECIAL MASTER, AND  
24 THEN I'M GOING TO TAKE A SHORT BREAK, AND THEN WE'LL MOVE ON TO  
25 CALHOUN.

1 SO MS. BONN?

2 MS. BONN: I THINK VERY BRIEFLY, THERE'S ONE KEY  
3 ISSUE WE WOULD LIKE TO ADDRESS, WHICH IS THAT, IF I UNDERSTOOD  
4 HER ARGUMENT CORRECTLY, MS. TREBICKA SAID, YOU KNOW, WHAT  
5 PLAINTIFFS HAVE BEEN TALKING ABOUT IN TERMS OF USING DATA TO  
6 IDENTIFY CLASS MEMBERS, OR RATHER GOOGLE BEING ABLE TO USE DATA  
7 IN THE CLAIMS PROCESS TO IDENTIFY OR REFUTE CLASS MEMBERS  
8 WOULDN'T WORK FOR TWO REASONS.

9 ONE, YOU COULD NEVER KNOW BY DATA WHETHER SOMEONE HANDED  
10 THEIR DEVICE TO ANOTHER HUMAN; AND NUMBER TWO, WE, GOOGLE,  
11 PSEUDONOMIZE I.P. ADDRESSES AFTER [REDACTED], SO YOU CAN'T GO  
12 BACK IN TIME.

13 AND I THINK THAT REALLY CRYSTALLIZES THE ENTIRETY OF THE  
14 DISPUTE ON THE CLASS CERTIFICATION SIDE, BECAUSE THE NINTH  
15 CIRCUIT HAS BEEN VERY CLEAR IN BRISENO THAT CLASS MEMBERS CAN  
16 SELF-IDENTIFY. THEY CAN COME FORWARD AND PUT IN A CLAIM FORM  
17 UNDER OATH AND SAY, I WAS THE PERSON BROWSING INCOGNITO DATA  
18 DURING THIS TIME PERIOD.

19 IF GOOGLE HAD PRESERVED THE DATA THAT THEY ONCE POSSESSED  
20 AND IF THEY HAD PRESERVED THE ENCRYPTION KEYS, WHICH THEY  
21 ROTATE ON A [REDACTED] BASIS, AND IF THEY HAD CEASED ALTERING  
22 I.P. ADDRESSES IN THE COURSE OF THIS LITIGATION, THEN WHEN A  
23 HUMAN BEING CAME FORWARD AND SAID, I'M THE PERSON WHO WAS  
24 BROWSING INCOGNITO ON SUCH AND SUCH DATE, GOOGLE AT THAT POINT  
25 MAY HAVE BEEN ABLE, WITH THE DATA THEY HAD, TO SAY --

1                   THE COURT: I APPRECIATE THAT. I APPRECIATE THAT,  
2 MS. BONN. BUT THAT WOULD BE AN ARGUMENT EITHER FOR CLASS CERT,  
3 OR IF YOU WERE TO GET TO THE CLAIMS PROCESS AND WHAT WILL AND  
4 WILL NOT WORK.

5                   MS. BONN: AND I THINK I SAY THAT -- I AGREE WITH  
6 THAT, YOUR HONOR.

7                   BUT I THINK THE QUESTION ON PRESERVATION IS, TO WHAT END?  
8 AND OUR POINT IS A SAMPLED PRESERVATION APPROACH DOESN'T  
9 ADDRESS THAT ISSUE BECAUSE IT CAN'T BE USED FOR THAT PURPOSE.  
10 IT MAYBE COULD BE USED FOR SOMETHING ELSE.

11                  THE COURT: OKAY. BUT THAT'S GOING TO BE GOOGLE'S  
12 PROBLEM. I MEAN, YOU WILL MAKE THAT ARGUMENT AT THE  
13 APPROPRIATE TIME AND GOOGLE WILL HAVE TO LIVE WITH IT.

14                  MS. BONN: AND I'D LIKE TO ALLOW MR. MAO TO MAKE A  
15 BRIEF POINT IF THAT'S OKAY.

16                  THE COURT: VERY BRIEFLY, YES.

17                  MR. MAO.

18                  MR. MAO: VERY BRIEFLY, YES, YOUR HONOR.

19                  WE CATEGORICALLY DISAGREE WITH MS. TREBICKA'S,  
20 RESPECTFULLY, HER ARGUMENTS ABOUT THE ABILITY TO IDENTIFY --

21                  THE COURT: OH, I UNDERSTAND. I GET IT. HOTLY  
22 CONTESTED. I GET IT.

23                  MR. MAO: RIGHT.

24                  AND SHE ONLY COVERED ONE METHOD. SHE COMPLETELY DID NOT  
25 ADDRESS THE OTHER METHODS BY WHICH THERE APPEARS TO BE NO

1 DISPUTE BY GOOGLE THAT USERS ARE ACTUALLY LOGGING IN WITH THEIR  
2 ID'S OR THEY'RE BEING TRACKED BY THEIR SPECIFIC CHROME  
3 INSTALLATIONS ON THEIR DEVICES.

4 SO I THINK THIS ISSUE SAYING THAT PLAINTIFFS CAN IDENTIFY,  
5 THAT ILLUSTRATES THE PROBLEM, YOUR HONOR, WHICH IS THAT IF  
6 THEY'RE GOING TO MAKE THE ARGUMENT THAT IDENTIFIABILITY IS SOME  
7 REQUIREMENT, EVEN THOUGH IT'S NONEXISTENT IN THE NINTH CIRCUIT,  
8 AT LEAST THE WAY IN WHICH THEY'RE PHRASING IT, WE SHOULD BE  
9 ALLOWED TO TEST THAT AND GET DOCUMENTS AND DISCOVERY ON THAT AS  
10 OPPOSED TO RELYING ON GOOGLE'S SAY SO.

11 THE COURT: OKAY. WELL, DISCOVERY IS LONG DONE.  
12 WE'VE MADE THOSE DECISIONS AND WE'VE MOVED ON.

13 AND WE'RE TALKING ABOUT PRESERVATION.

14 MR. MAO: RIGHT. BUT THAT IS PART OF WHAT WE'RE  
15 TALKING ABOUT, RIGHT, YOUR HONOR, BECAUSE THIS CASE AND THE  
16 BEHAVIOR CONTINUES TO GO FORWARD.

17 WE, YOU KNOW, AS INTERIM CLASS COUNSEL, WE HAVE A DUTY TO  
18 ZEALOUSLY ADVOCATE FOR OUR CLIENTS' INTEREST, AND AS YOU'VE  
19 HEARD, AS PART OF THIS, GOOGLE DOES NOT DENY THAT THEY TAKE THE  
20 INCOGNITO DATA, RIGHT, THEY MONETIZE OFF OF IT, AND THEN AFTER  
21 THE USE IS DONE, [REDACTED] LATER, THEY [REDACTED]

22 [REDACTED]  
23 [REDACTED].

24 THIS IS A -- RESPECTFULLY, YOUR HONOR, THEIR -- GOOGLE  
25 NEEDS TO MAKE A CHOICE. THEY CAN'T HAVE IT BOTH WAYS.

1 THE COURT: OKAY. I GOT IT.

2 MR. MAO: OKAY. THANK YOU, YOUR HONOR.

3 THE COURT: THANK YOU, MR. MAO.

4 ALL RIGHT. WE'RE GOING TO TAKE TEN MINUTES.

5 MR. BRUSH AND MR. SCHMIDT, I WILL MEET YOU ON OUR OTHER  
6 CHANNEL.

7 EVERYONE MAY TURN OFF YOUR VIDEOS AND STEP AWAY, AND WE  
8 WILL COME BACK FOR THE CALHOUN MATTER.

9 ALL RIGHT. THANK YOU.

10 (RECESS FROM 2:24 P.M. UNTIL 2:39 P.M.)

11 THE COURT: ALL RIGHT. THANK YOU ALL.

12 STILL ON BROWN, I'VE HAD A MOMENT TO CONFER WITH  
13 SPECIAL MASTER BRUSH AND MR. SCHMIDT AND THEY HAVE JUST A  
14 COUPLE OF QUESTIONS AS IT RELATES TO BROWN AND SOME OF THE  
15 ISSUES THAT WERE RAISED IN THE PAPERS.

16 MR. BRUSH.

17 MR. BRUSH: YES, HI. I AM HERE AGAIN FOR TODAY, AND  
18 JUST A FEW THINGS THAT ARE FOLLOW-UPS FROM SOME OF THE SLIDES  
19 WE JUST HEARD.

20 YOU IDENTIFIED A LOT OF DATA SOURCES, BUT WHAT ARE SOME OF  
21 THE DATA SOURCES THAT MIGHT HAVE BEEN LEFT OUT? THERE WERE A  
22 NUMBER THAT WERE PROVIDED IN THE OBJECTIONS, BUT I JUST WANT TO  
23 CLARIFY FOR THE RECORD, WHAT ARE THE SPECIFIC DATA SOURCES THAT  
24 PLAINTIFFS ARE LOOKING FOR? AND IF YOU WOULD PRIORITIZE IT,  
25 TOO, THAT WOULD BE HELPFUL. IF YOU HAD TO LOOK AT THE CORPUS

1 OF THIS, WHAT ARE SOME OF THE MORE PRIORITY DATA SOURCES?

2 QUESTION 2. OF THE P LOGS LISTED IN THE PRESERVATION  
3 ORDER, HOW CAN WE REALLY HELP YOU IN THE CASE GOING FORWARD AS  
4 FAR AS, YOU KNOW, WHAT YOU NEED TO DO AS FAR AS FURTHER STEPS.

5 AND THEN OVERALL ON THE -- YOU KNOW, WE DISCUSSED A [REDACTED]  
6 [REDACTED] KIND OF THRESHOLD FOR PRESERVATION ORDER AND LOOKING AT  
7 SOME OF THE SAMPLING. IF NOT [REDACTED], IS THERE A REASONABLE  
8 PERCENTAGE YOU WOULD FEEL COMFORTABLE WITH SHOULD WE ELECT TO  
9 GO THAT ROUTE?

10 AND I'LL LEAVE THAT TO PLAINTIFFS TO START, AND IF WE CAN  
11 THEN HEAR FROM THEM.

12 MS. BONN: I'LL LET MR. MAO ADDRESS QUESTIONS 1 AND  
13 2, AND THEN I THINK I CAN ADDRESS QUESTION 3.

14 SO MR. MAO ON THE DATA SOURCES.

15 MR. MAO: SURE.

16 SPECIAL MASTER BRUSH AND MR. SCHMIDT, GOOD AFTERNOON.

17 SO I THINK ONE, ONE BIG SOURCE THAT WE IDENTIFIED WAS  
18 ACTUALLY THE [REDACTED], AND THERE'S THREE DIFFERENT  
19 PERMUTATIONS OF [REDACTED], AND THE REASON FOR THAT, THAT WE  
20 FLAGGED THAT, WAS BECAUSE IT'S UNCLEAR, GIVEN, YOU KNOW, THE  
21 INCONSISTENT KIND OF REPORTING OF WHAT THAT RETENTION PERIOD IS  
22 IN BROWN VERSUS IN CALHOUN. IN BROWN, IT SEEMED LIKE IT WAS  
23 GOING TO BE A PERMANENT, BUT THEN I UNDERSTAND THERE MAY BE  
24 SOME DIFFERENCES ON THAT.

25 BUT THE REASON WHY WE RAISE THAT IS BECAUSE IN TERMS OF

1 TRYING TO CONSTRUCT A SUPER LOG, [REDACTED], ADDING IN  
2 SOME OF THE OTHER STUFF -- ADDING IN ONE OR TWO FIELDS FROM  
3 [REDACTED] SEEMS TO BE THE LEAST DISRUPTIVE AND EASIEST WAY TO  
4 CONSTRUCT THE SUPER LOG GIVEN THE AMOUNT OF DATA AND THE WEALTH  
5 OF IDENTIFIERS IN THE [REDACTED].

6 I THINK THAT'S THE ANSWER TO YOUR QUESTION NUMBER 1,  
7 SPECIAL MASTER BRUSH.

8 MS. BONN: I'D ALSO ADDRESS, MR. MAO, THE ENCRYPTION  
9 KEY AND THE MAPPING TOOLS ALSO.

10 THE COURT: I THINK WE GOT THOSE.

11 MR. MAO: RIGHT. SO THE ENCRYPTION KEYS, THE MAPPING  
12 AND LINKING TABLES, THAT'S IN THERE.

13 BUT PARTIALLY TO YOUR SECOND QUESTION, WHICH I THINK ALSO  
14 FEEDS INTO THE FIRST QUESTION, IS THE IDEA OF P LOGS, RIGHT?

15 MR. FRAWLEY, IF I COULD ASK YOU TO PUT UP SLIDE NUMBER 8  
16 JUST AS AN ILLUSTRATION.

17 SO, SPECIAL MASTER BRUSH, I THINK WE'VE COVERED AND TALKED  
18 ABOUT HOW WITHIN, WITHIN GOOGLE TAKEOUT, WHICH IS A TYPE -- I  
19 WOULD SAY IT'S A PROCESS PRODUCT OUT OF THE P LOGS, I'M NOT  
20 SURE WHAT BECAUSE WE HAVEN'T BEEN PROVIDED THE SCHEMAS OR  
21 EXACTLY HOW THIS WORKS.

22 BUT YOU CAN SEE IT'S TIED TO GAIA ID'S, IT'S TIED TO LOG  
23 INS, AND WHAT WE REALLY WANT OUT OF THE P LOGS IS A COMBINATION  
24 OF BASICALLY ID'S, AND THEN THE I.P. ADDRESSES PLUS USER AGENT  
25 STRINGS WITH THE TIME STAMPS.

1                   THERE'S PROBABLY A COUPLE OF DIFFERENT WAYS YOU CAN ARRIVE  
2                   AT THAT, BECAUSE I DON'T BELIEVE THAT THIS, THESE GAIA ID BASED  
3                   LOGS IS, IS A -- HOW DO I SAY THIS? I'M GUESSING THIS IS NOT A  
4                   PROTO LOG IN THE SENSE THAT IT'S A PROCESSING LOG THAT COMES  
5                   OUT OF SOME LOG, AND WE JUST DON'T KNOW WHAT THAT IS, BECAUSE  
6                   AS YOU CAN PROBABLY APPRECIATE, GAIA LOGS AND SCHEMA ON THAT  
7                   WAS NOT PRODUCED BY THE OTHER SIDE UNTIL VERY RECENTLY.

8                   DOES THAT ANSWER YOUR QUESTION?

9                   BUT THIS IS ANOTHER REASON WHY WE RAISED THIS AS A SOURCE  
10                  WHICH REQUIRED FURTHER REFINEMENT AND FURTHER THOUGHT.

11                  MS. BONN: AND THEN I THINK I'LL ADDRESS QUESTION 3.  
12                  AND, MARK, IF YOU WANT TO --

13                  THE COURT: BEFORE YOU MOVE ON TO THAT, MS. BONN,  
14                  MR. BRUSH, MR. SCHMIDT, DID THAT ANSWER THE QUESTION ON THE  
15                  P LOGS, THE USE OF THOSE GOING FORWARD?

16                  MR. MAO: YEAH, AND SPECIAL MASTER BRUSH, JUST A  
17                  LITTLE BIT OF CONTEXT, RECALL THERE WAS A CHALLENGE  
18                  REGARDING -- FROM GOOGLE SAYING, HOW DO I PROVE THAT THESE I.P.  
19                  ADDRESSES AND USER AGENT STRINGS BELONG TO ME?

20                  AS YOU CAN SEE FROM THE P LOGS, THOSE P LOGS, AT LEAST FOR  
21                  THOSE PERMUTATIONS -- AND WE CAN SET ASIDE IPV4 ADDRESSES --  
22                  BUT IPV6 ADDRESSES, FOR THE TIMES THOSE ARE LOGGED, THOSE WILL  
23                  ABSOLUTELY BE UNIQUE TO ME.

24                  AND WE CAN CORRELATE THAT ACROSS ANY OF THE B LOGS. I  
25                  UNDERSTAND THAT WE CAN HAVE A DISAGREEMENT OVER THAT, BUT --

1 AND THIS KIND OF GOES BACK TO THE POINT, WHICH IS THAT IF  
2 GOOGLE WANTS TO MAKE THE ARGUMENT, WE THINK THERE SHOULD BE  
3 SOME OBLIGATION FOR THEM TO PRESERVE SO THAT THAT CAN BE  
4 TESTED, WHICH IS THE REASON WHY WE WERE RAISING THAT FOR THE  
5 P LOGS.

6 THE COURT: SO YOU'RE ON MUTE, MR. BRUSH. MR. BRUSH,  
7 YOU'RE ON MUTE.

8 MR. BRUSH: IT WOULD HELP IF I GET OFF MUTE. I'LL  
9 TRY AGAIN.

10 SO I JUST WANT TO CLARIFY ONE THING AS WE DISCUSSED, AND  
11 I'M NOT GOING TO UNRAVEL THAT TODAY, THE ISSUE OF I.P. ADDRESS  
12 IDENTIFICATION.

13 BUT TO CLARIFY THAT WHEN WE TALK ABOUT IPV6, IT'S TIED  
14 BACK TO THE DEVICE.

15 AND THEN THERE'S FURTHER CORRELATION THAT NEEDS TO BE DONE  
16 TO A SPECIFIC USER OF THAT DEVICE. BUT LET'S BE ABSOLUTELY  
17 CLEAR THAT WHEN WE DISCUSSED THIS, AND THIS IS ON THE RECORD,  
18 THAT WHEN WE TALK ABOUT IPV6 ADDRESSES, IT IS CORRELATED TO A  
19 SPECIFIC DEVICE, NOT NECESSARILY THE USER, BUT THERE CAN BE  
20 OTHER CORRELATION.

21 MR. MAO: RIGHT. BUT, I MEAN, SPECIAL MASTER, IN  
22 LAWSUITS ALL THE TIME --

23 MR. BRUSH: I DON'T --

24 THE COURT: I KNOW. I'M GOING TO -- I'M GOING TO  
25 FORESTALL THAT ARGUMENT, OR SAVE THAT ONE FOR ANOTHER DAY.

1 I UNDERSTAND THAT THERE'S BEEN A LOT OF DISCUSSION AROUND  
2 THE VALUE OF THE IPV6.

3 AND I ALSO WANT TO BE SURE THAT, MR. BRUSH AND  
4 MR. SCHMIDT, YOU GOT A COMPLETE RESPONSE TO YOUR INQUIRY AROUND  
5 WHAT DATA SOURCES TO ADD. I HEARD MR. MAO REFER TO THE [REDACTED]  
6 [REDACTED], THE LOG, AND THERE'S A COUPLE DIFFERENT PERMUTATIONS  
7 OF THAT.

8 MR. MAO: SO WE LISTED THOSE, YOUR HONOR, IN OUR  
9 REPLY. THERE WERE THREE DIFFERENT [REDACTED]. THAT'S, YOU  
10 KNOW, WHAT WAS TOLD TO US.

11 AND THEN IT WAS MAPPING AND LINKING TABLES AND ENCRYPTION  
12 KEYS, WHICH IS ALSO IN OUR PAPERS.

13 AND THEN BASICALLY, YOU KNOW, WHAT LOOKS LIKE THE, THE  
14 GOOGLE TAKEOUT DATA, WHICH IS A PART OF SOME GAIA SET OF LOGS  
15 IN WHICH WE, YOU KNOW, DON'T QUITE KNOW WHAT THE SOURCE IS, BUT  
16 WE DO HAVE THE SPECIFICATION THERE, WHICH IS THE TAKEOUT DATA.

17 MR. BRUSH: SO JUST FOR CLARIFY, THE THREE LOGS THAT  
18 ARE LISTED AT THE TOP OF YOUR STATEMENT, WHAT ARE THEIR NAMES?

19 MR. MAO: [REDACTED].

20 I BELIEVE -- AND THIS IS ONE OF THE REASONS WHY I WAS  
21 GOING TO HAVE MR. THOMPSON ON, BUT I WILL TRY. I BELIEVE THERE  
22 IS AN [REDACTED], AND THEN THERE IS THE [REDACTED]  
23 [REDACTED], AND THEN I THINK THERE'S ONE MORE PERMUTATION OF  
24 THE [REDACTED].

25 MR. BRUSH: OKAY. THANK YOU.

1 MR. MAO: RIGHT. THAT'S IN OUR RESPONSE TO GOOGLE'S  
2 OBJECTIONS, YEAH. I THINK IT'S [REDACTED].

3 MR. BRUSH: THANK YOU.

4 THE COURT: AND THEN THE THIRD QUESTION WITH REGARDS  
5 TO THE -- AN ALTERNATIVE SAMPLING OF SIZE.

6 MS. BONN, YOU'RE NOT CONCEDING ANYTHING, BUT THE SPECIAL  
7 MASTER HAS AN OBJECTIVE QUESTION. PLEASE.

8 MS. BONN: UNDERSTOOD.

9 AND I THINK FROM, FROM OUR PERSPECTIVE, AND THEN I'LL  
10 ALLOW MR. MAO TO ADD ANYTHING, BUT WHAT WE KNOW IS THAT THE  
11 INCOGNITO TRAFFIC FLAGGED WITH THE MAYBE\_CHROME\_INCOGNITO BIT  
12 IS APPROXIMATELY [REDACTED] OF THE CHROME TRAFFIC.

13 IF [REDACTED] IS VIEWED AS AN APPROPRIATE THRESHOLD IN  
14 TERMS OF BURDEN, YOU KNOW, OBVIOUSLY WHAT WE WOULD LIKE IS THE  
15 SPECIFIC [REDACTED] THAT'S FLAGGED WITH THE INCOGNITO DETECTION  
16 BIT RATHER THAN RANDOMLY SAMPLED ENTRIES, WHICH MAY OR MAY NOT  
17 EVEN BE INCOGNITO ENTRIES.

18 TO THE EXTENT THAT WE COULD WORK WITH GOOGLE TO BETTER  
19 UNDERSTAND WHAT THE ACTUAL BURDEN IS ASSOCIATED WITH LIMITING  
20 THE NUMBER OF FIELDS, DEDUPING THE DATA, AND TRYING TO BRING  
21 THIS FUNNEL DOWN FROM WHAT SOUNDS LIKE EVERYTHING TO THE  
22 SUBSET, I THINK THAT IS WHAT WE WOULD NEED IN ORDER TO  
23 DETERMINE WHETHER, YOU KNOW, THERE'S SOME LESSER THRESHOLD.

24 BECAUSE RIGHT NOW -- AND I THINK MS. TREBICKA'S COMMENTS  
25 REFLECTED THIS -- SHE, I THINK, SAID WE DON'T KNOW WHAT THE

1 BURDEN WOULD BE OF THE SUPER LOG BECAUSE WE'D HAVE TO HAVE MORE  
2 DIALOGUE AND WE DON'T KNOW WHAT THAT WOULD LOOK LIKE AND WHAT  
3 THE FIELDS WOULD BE AND HOW MUCH STORAGE THAT WOULD TAKE.

4 AND I THINK THAT'S OUR PERSPECTIVE, TOO, THAT THERE'S  
5 SIMPLY NOT RECORD EVIDENCE THAT WOULD SUGGEST THAT PRESERVING  
6 THAT [REDACTED] IS BURDENSOME.

7 AND IF WE NEED TO HAVE A DISCUSSION ABOUT TRYING TO REDUCE  
8 OR GO AROUND THAT, IT SOUNDS, EVEN FROM GOOGLE'S OWN COMMENTS,  
9 THAT THEY DON'T BELIEVE THEY HAVE PROVIDED THE INFORMATION THAT  
10 WOULD BE NEEDED TO MAKE THAT BURDEN ASSESSMENT.

11 AND I'LL LET MR. MAO ADDRESS THAT AS WELL IF HE HAS  
12 ANYTHING TO ADD.

13 MR. MAO: SURE.

14 AND SPECIAL MASTER BRUSH, THIS IS WHY WE MENTIONED THE  
15 [REDACTED]. IF YOU LOOK AT THE SCHEMA OF  
16 THAT -- WE DON'T HAVE THE FULL SCHEMA. WE ONLY HAVE THE TOP  
17 100 FIELDS. BUT IF YOU LOOK AT THAT DESCRIPTION, THAT SEEMS TO  
18 HAVE THE LARGEST SET OF RAW FIELDS ALREADY, AND AT LEAST THE  
19 REPRESENTATION TO US WAS THAT'S ALREADY STORED PERMANENTLY.

20 SO THE IDEA OF THIS SET OF SUPER LOGS THAT THEY WOULD BE  
21 ADDING, RIGHT, MERELY ON TO WHAT GOOGLE IS ALREADY STORING WITH  
22 A MERE NUMBER OF COUPLE OF FIELDS, AND ESPECIALLY FOR THE  
23 INCOGNITO BITS, WHICH WE ALREADY TALKED ABOUT IN ANOTHER  
24 HEARING, YOU CAN APPRECIATE THAT THE AMOUNT OF ADAGE FROM THAT  
25 IS GOING TO BE RATHER SMALL BECAUSE THESE ARE BITS OF DATA AND

1 NOT AN ENTIRE X-CLIENT DATA HEADER STRING, WHICH IS WHY WE WERE  
2 SUGGESTING THE [REDACTED] AS A WAY TO THINK ABOUT THE SUPER  
3 LOGS.

4 NOW, JUST APPRECIATE THAT, YOU KNOW, WE DO HAVE THE UMA,  
5 RIGHT, THE UMA DATA SET, WHICH ARE GOING TO BE TIED TO BROWSER  
6 INSTANCES. I THINK THERE'S GOING TO BE WAYS IN WHICH YOU CAN  
7 STRIP THAT DOWN AS WELL SO THAT YOU'RE NOT STORING IT IN ITS  
8 FULL FORM WITH ALL OF ITS HISTOGRAMS AND USER ACTIONS.

9 AND FOR THE [REDACTED] AS WELL, INSOFAR AS THEY'RE  
10 DIFFERENT FROM THE [REDACTED], I THINK YOU CAN ALSO STRIP  
11 THAT DOWN SUBSTANTIALLY AS WELL.

12 I THINK THAT'S WHAT WE WERE TALKING ABOUT WITH REGARD TO  
13 SUPER LOGS, WHICH WERE PROPOSED BY MR. ANSORGE AS A, I THINK IT  
14 WAS A MARCH 15TH EMAIL.

15 THE COURT: ANYTHING FURTHER, MR. BRUSH, MR. SCHMIDT,  
16 FOR PLAINTIFFS?

17 MR. BRUSH: I DON'T HAVE ANYTHING SPECIFICALLY.

18 I DID SEE HIS HAND GO UP. I DON'T KNOW IF HE WANTED TO  
19 ADDRESS THAT LAST COMMENT FROM MR. MAO.

20 MS. TREBICKA: YOUR HONOR, WE WOULD LIKE AN  
21 OPPORTUNITY --

22 THE COURT: I UNDERSTAND, MS. TREBICKA. I'M GETTING  
23 TO YOU.

24 MS. TREBICKA: OKAY.

25 THE COURT: I WANT TO BE SURE THE SPECIAL MASTER TEAM

1 HAS GOTTEN THE INFORMATION THAT THEY NEEDED.

2 MR. BRUSH: I THINK SO. YEAH, I THINK FOR NOW.

3 MR. SCHMIDT: NOTHING FURTHER FROM ME.

4 THE COURT: ALL RIGHT. THANK YOU, BOTH.

5 I APPRECIATE IT.

6 BRIEF RESPONSE, MS. TREBICKA.

7 MS. TREBICKA: YOUR HONOR, MY COLLEAGUE, DR. ANSORGE,  
8 WILL ADDRESS IT.

9 I WOULD JUST LIKE TO ADDRESS THE LAST QUESTION FIRST,  
10 WHICH IS THE [REDACTED].

11 FROM OUR PERSPECTIVE, A PERCENTAGE IS NOT A GOOD STARTING  
12 POINT BECAUSE OF THE VOLUME AND THE BURDEN.

13 WE DISAGREE THAT WE DON'T KNOW WHAT THE BURDEN IS. WE  
14 KNOW WHAT THE BURDEN IS. WE JUST NEED TO KNOW WHAT THE AMOUNT  
15 OF DATA IS OR WHAT THE PARTICULAR FIELDS ARE THAT PLAINTIFFS  
16 HAVE IN MIND.

17 BUT WE THINK THAT THE SPECIAL MASTER'S PROPOSAL OF 10,000  
18 A DAY, FOR EXAMPLE, OR SOME NUMBER, IS THE APPROPRIATE WAY TO  
19 FRAME IT INSTEAD OF A PERCENTAGE OF THE LOGS.

20 AND WITH THAT, I'D LIKE TO HAND IT OVER TO DR. ANSORGE.

21 THE COURT: THANK YOU.

22 MR. ANSORGE: YES, YOUR HONOR.

23 THE SUPER LOG HAS BEEN ADDRESSED A NUMBER OF TIMES.

24 THE COURT: YEAH, AND WE DON'T NEED TO ADDRESS THAT.  
25 WHAT I'D LIKE TO KNOW IS IF YOU HAVE ANY RESPONSE TO --

1 PLAINTIFFS HAVE IDENTIFIED THE, THE [REDACTED], THE SPECIFIC  
2 LOGS THAT THEY SAID THEY WOULD LIKE TO HAVE ADDED, AND THEN  
3 THEY HAD A DISCUSSION AROUND THE P LOG INFORMATION.

4 IF YOU CAN ADDRESS EITHER OF THOSE POINTS.

5 MR. ANSORGE: YES, YOUR HONOR.

6 WE'VE AGREED TO ADD THE [REDACTED]. THAT WAS IN OUR  
7 PAPERS. WE'RE HAPPY TO HAVE THAT IN ON A SAMPLED BASIS IF WE  
8 WOULD PROCEED.

9 FROM WHAT MR. MAO WAS SAYING, THE DATA THAT HE IS LOOKING  
10 FOR, I.P. ADDRESS, USER AGENT, RESPECTFULLY, IF THAT'S THE  
11 INFORMATION THAT'S REQUIRED, THEN WE DON'T NEED 20 DIFFERENT  
12 P LOGS. THAT'S QUITE SIMPLE INFORMATION THAT CAN BE PULLED  
13 FROM JUST ONE OR TWO DIFFERENT LOGS.

14 AS FOR THE OTHER TWO [REDACTED] SOURCES THAT MR. MAO  
15 REFERENCED, THE [REDACTED] AND THE [REDACTED], BOTH  
16 OF THOSE WERE DISCLOSED ON SEPTEMBER 17TH PURSUANT TO THE  
17 SEPTEMBER 16TH ORDER. WE'VE PROVIDED INFORMATION ABOUT THEM.  
18 WE PRODUCED NUMBERS OF DOCUMENTS RELATED TO THEM. I COULD  
19 RATTLE OFF THE BATES NUMBERS IF YOU WOULD LIKE. THEY'RE  
20 INCLUDED IN THE GOLUEKE DECLARATION.

21 THAT IS ALL TO SAY, YOUR HONOR, THAT WE HAVE GONE THROUGH  
22 THE DISCLOSURE PROCESS AND AT THIS STAGE WE WOULD HOPE THAT AT  
23 THIS POINT IN THE LITIGATION, PLAINTIFFS HAVE ENOUGH  
24 INFORMATION, AND IF NOT, THEN THEY'VE HAD SUFFICIENT  
25 OPPORTUNITIES TO --

1                   THE COURT: WELL, AGAIN, THIS ISN'T A DISCOVERY TOOL.  
2                   THIS IS A PRESERVATION TOOL, SO THE REQUEST IS THAT DATA IN  
3                   THOSE LOGS BE PRESERVED.

4                   MR. ANSORGE: YES, YOUR HONOR.

5                   AND I WOULD SAY THAT IF THE -- IF THE FIELDS THAT  
6                   PLAINTIFFS ARE INTERESTED IN ARE THE ONES THAT MR. MAO IS  
7                   LISTING, THEN I DON'T SEE HOW THOSE PARTICULAR SOURCES WOULD  
8                   HAVE TO BE DISCLOSED.

9                   I THINK THE [REDACTED] ITSELF -- OR WOULD HAVE TO BE  
10                  PRESERVED. THE [REDACTED] ITSELF WOULD HAVE TO BE SUFFICIENT  
11                  FOR THAT.

12                  THE COURT: OKAY. ALL RIGHT.

13                  MR. ANSORGE: WITH REGARD TO THE SAMPLING, ON [REDACTED]  
14                  [REDACTED], I WOULD JUST ADD THAT REPRESENTATIVE SAMPLES, AS A  
15                  RULE OF THUMB, WE WOULD TREAT SOMETHING AS REPRESENTATIVE IF  
16                  IT'S UP TO 1,000, MAYBE 10,000.

17                  YOU DON'T USUALLY SAY THAT SOMETHING IS REPRESENTATIVE IF  
18                  IT'S [REDACTED] OF DIFFERENT ENTRIES, AND I THINK  
19                  JUST WITH THE AMOUNT OF DATA AT ISSUE, WE HAVE TO BEGIN TO ASK  
20                  OURSELVES WHETHER OUR EXPERTS WILL EVER ACTUALLY BE ABLE TO  
21                  WORK WITH IT OR IF IT CAN SOMEHOW BE MEANINGFUL IN ANY KIND OF  
22                  CLAIMS ADMINISTRATION PROCESS.

23                  THE COURT: GOT IT.

24                  MR. ANSORGE: WE'RE TALKING ABOUT BUILDING SERVER  
25                  CENTERS.

1                   THE COURT: THANK YOU. WE'RE NOT GOING TO TAKE  
2 ANYTHING FURTHER ON THAT UNLESS MR. BRUSH OR MR. SCHMIDT HAVE  
3 ANY FOLLOW-UP QUESTIONS.

4                   MR. BRUSH: NO, YOUR HONOR.

5                   THE COURT: MR. SCHMIDT, ANYTHING FURTHER?

6                   MR. SCHMIDT: NO, YOUR HONOR.

7                   THE COURT: OKAY. ALL RIGHT.

8                   THIS HAS BEEN ENLIGHTENING, AND I GREATLY APPRECIATE THE  
9 PARTIES FORMULATING THEIR CONCERNS AND THEIR ISSUES AROUND THE  
10 PROPOSED PRESERVATION PLAN TO THE QUESTIONS THAT I HAVE POSED  
11 AROUND THE FORMATION OF THE CLASS, LIABILITY AND DAMAGES. SO  
12 THANK YOU FOR BEING RESPONSIVE IN THAT REGARD.

13                  AND THERE'S BEEN A LOT OF INFORMATION SET FORTH IN  
14 ARGUMENT HERE TODAY, AND OF COURSE IN THE PAPERS, AND WE ARE  
15 ALL SPENDING A LOT OF TIME WITH IT.

16                  SO WE WILL CONTINUE THAT GOOD WORK, AND IF WE NEED  
17 ADDITIONAL INFORMATION OR ADDITIONAL INPUTS, DON'T WORRY,  
18 YOU'LL HEAR FROM US. OKAY?

19                  THANK YOU ALL VERY MUCH. WE'RE GOING TO MOVE TO THE  
20 CALHOUN MATTER NOW, CALHOUN.

21                  (THE PROCEEDINGS WERE CONCLUDED AT 2:56 P.M.)

22

23

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25

1  
2  
3 CERTIFICATE OF REPORTER  
4  
5  
6

7 I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED  
8 STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA,  
9 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY  
10 CERTIFY:

11 THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS  
12 A CORRECT TRANSCRIPT FROM THE RECORD OF ZOOM PROCEEDINGS IN THE  
13 ABOVE-ENTITLED MATTER.

14  
15 *Lee-Anne Shortridge*  
16

17 LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595  
18 DATED: JUNE 4, 2022  
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